United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-2427-2482

(41848)

United States Court of Appeals

FOR THE SECOND CIRCUIT

Detainees of the Brooklyn House of Detention for Men, RAYMOND MOCTEZUMA, RONALD FOY, LAWRENCE ODOM, FRANK WILLIAMS, individually and on behalf of all other persons similarly situated,

Plaintiffs-Appellees,

—v.—

BENJAMIN J. MALCOLM, Commissioner of Correction of the City of New York, THEODORE R. WEST, Warden, Brooklyn House of Detention for Men, ABRAHAM D. BEAME, Mayor of New York City, LOWELL B. BELLIN, Health Commissioner and Health Services Administrator of the City of New York, individually and in their official capacities,

Defendants-Appellants.

RALPH VALVANO, DONALD LEROLAND and JONATHAN WILLIAMS, individually and on behalf of all other persons similarly situated,

Plaintiffs-Appellees,

—v.—

BENJAMIN J. MALCOLM, Commissioner of Correction of the City of New York, ABRAHAM D. BEAME, Mayor, City of New York, SALVATORE LATORRE, Warden, Queens House of Detention for Men, individually and in their official capacities,

Defendants-Appellants,

NICHOLAS FERRARO, District Attorney, Queens County,

Defendant.

ON APPEAL FROM JUDGMENT AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume 1

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UNITED STATES COURT OF APPEALS
FILED
JAN 15 1975
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SECOND CIRCUIT

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Docket Entries—Queens House of Detention
(Valvano Action)

70 Civ. 1390

DATE	PROCEEDINGS
11- 9-70	Complaint filed. Summons Issued.
11-12-70	Summons returned and filed. Queens House of Detention for Men srvd on 11-10-70.
11-12-70	Order to show cause with proof of srv. filed for preliminary injunction etc. (ret Nov 13, 1970)
12-12-70	By JUDD, J.—Order (signed 12-9-70) filed, that a temporary restraining order be issued,—that defts Kennedy and Ossicow permit counsel etc. free access to any and all members of pltff class when request to see them in connection with this cause etc.
11-13-70	Before JUDD, J.—Show cause for preliminary injunction etc. adjd to 11-17-70 at 2:00 P.M.
11-13-70	Affidavit of William A. Nelson filed.
11-17-70	Before JUDD, J.—Hearing on show cause for preliminary injunction etc begun and to be continued on 11-20-70 at 1:30 P.M. Court directs Clerk to contact U.S. Marshal and arrange transportation to and from the New Queens House of Detention etc. for the Judge and authorized staff as indicated.
11-17-70	By JUDD, J.—Order filed that the Clerk and U.S. Marshal arrange transportation to the Queens House of Detention and return etc. departing from US Court house at 12:30 P.M.
11-18-70	Affidavit of Albert J. Ossakow filed.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
11-19-70	By JUDD, J.—Restraining order filed etc., this order shall continue until further of this Court, on 24 hrs written notice to the parties.
11-19-70	Before JUDD, J.—Hearing on show cause for preliminary injunction held in chambers—restraining order signed.
11-20-70	Before JUDD, J.—Hearing on show cause for preliminary injunction & adjd to Nov 24, 1970 at 4:00 P.M.
11-24-70	Before JUDD, J.—Case called—Hearing on show cause for preliminary injunction continued—Hearing continued to 11/25/70 at 10:15 A.M. NOTE: Judge Judd signed order to hold inmate Edward Andre as a material witness at the Federal House of detention. Original order delivered to U.S. Marshal. Certified copy ordered filed.
11-24-70	Certified copy of order by Judge Judd to hold inmate Edward Andre as a material witness etc. filed.
11-25-70	Before JUDD, J.—Case called—Hearing continued—Hearing adjd to Monc 11-30-70 at 4:15 P.M. in chambers for conference—Formal hearing in open Court is to be continued on Dec 1, 1970 at 2:00 P.M.
11-30-70	Before JUDD, J.—Case called—Conference held in Chambers—Hearing cont'd to 12-1-70 at 2:00 P.M. in open court.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
12- 1-70	Before JUDD, J.—Case called Hearing resumed —Hearing continued to 12-2-70 at 10:15 A.M.
12- 2-70	Statement of RAYMOND MINORI, submitted to the court on 11-20-70 filed.
12- 2-70	Statement of DANIEL CASSESSE, submitted to the court on 11-20-70 filed.
12- 2-70	Statement of LEON BATSON, submitted to the court on 11-20-70 filed.
12- 2-70	Statement of Bernard Bovian, submitted to the court on 11-20-70 filed.
12- 2-70	Statement of ARTHUR CORSO, submitted to the court on 11-20-70 filed.
12- 2-70	Statement of CHARLES SANDERS, submitted to the Court on 11-20-70 filed.
12- 2-70	Before JUDD, J.—Hearing on show cause resumed—Hearing adjd to 12-3-70 at 10:15 A.M.
12- 3-70	Before JUDD, J.—Hearing on show cause resumed—Hearing cont'd to Dec. 7, 1970 at 10:15 A.M.
12- 7-70	Before JUDD, J.—Hearing resumed—Hearing continued to 12-8-70 at 10:00 A.M.
12- 8-70	Before JUDD, J.—Case called—Hearing resumed on Courts proposed interim findings & order to deny preliminary injunction etc. held—Amended order granting & denied as indicated. Pltff moves

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
	for copy of the transcript at Govt's expense—Motion denied without prejudice to renew application at a later date.—Hearing concluded.
12- 8-70	By JUDD, J.—INTERIM FINDINGS & ORDER FILED. Pltffs' motion for preliminary injunction is denied, as indicated etc. (P/C mailed to attys)
12-10-70	Before JUDD, J.—Case called—Conference held and concluded.
12-10-70	By JUDD, J.—AMENDMENTS TO INTERIM FINDINGS AND ORDER FILED. The time for deft Acting Warden Ossakow to comply with ordering paragraph IX is extended to 6:00 P.M. Dec 11, 1970. (copy mailed to William E. Hellerstein, (Legal Aid) George Roberts (Dept of Correction) Leonard Bernikow (Asst. Corp. Counsel) William J. Vanden Heuvel, Chairman N.Y.C. Board of Correction.
12-16-70	Pltffs' memorandum of law filed in support of a Class Action.
12-16-70	Daniel Cassese was remanded to Queens House of Detention 12-15-70 as per instruction, on memorandum of Judge Judd to U.S. Marshal, filed.
12-17-70	Before JUDD, J. Case called in chambers. Conference held & concluded.
12-18-70	AMENDED COMPLAINT FILED.
12-21-70	Memorandum of law filed on behalf of defts.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
12-21-70	Before JUDD, J.—Case called in chambers for conference and continued to 12-23-70 at 10:00 A.M.
12-23-70	Before JUDD, J.—Hearing on modification of the interim Findings and Order etc.—Oral motion by attys for pltff to cite defts for contempt etc.—Motion argued—Decision Reserved—Defts motions to amend interim findings and order etc. Denied as indicated—Pltff's motion for contempt etc. denied—Court's decision as to class action—Decision remains reserved as indicated—Pltff's motion to transfer pltff Ralph Calcano to Federal House of Detention during pendency of the proceedings as a material witness, denied. Hearing concluded.
1- 4-71	Letter to Judge Judd from John M. Brickman, (Brd of Correction City of N.Y.) dated 12-28-70) filed.
1- 4-71	Notion of motion and memorandum of law filed, adding Hon Thomas J. Mackell, Dist. Atty, Queens County as a party deft etc. (ret Jan 8, 1971)
1- 8-71	Respondent's memorandum of law filed.
1- 8-71	Before JUDD, J.—Hearing on motion adding Hon Thomas J. Mackell as a party deft—Motion argued—Motion granted—See order endorsed on back of motion papers—Deft Mackell's time to answer extended to 1-22-71—Pltff's oral applica-

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
	tion to take deposition of a dept correction employee—Granted as indicated. Further hearing adjd to 1-12-71 at 10:00 subject to confirmation by the parties to the action on the taking of depositions etc.
1- 8-71	By JUDD, J.—Order filed granting motion for leave to add Thomas J. Mackell as a party deft etc. Summons shall issue against the additional deft Thomas J. Mackell, So ordered. (see order endorsed on back of motion papers)
1-11-71	Additional summons issued as to Thomas J. Mackell.
1-11-71	Pltff's notice to take the deposition of Correction Officer Stemicz on 1-22-71 filed.
1-12-71	By Judd, J. The court reported that the parties have consented to taking of the deposition of Correction Officer Stemicz on 1/11/71. Motion marked off.
1-15-71	By JUDD, J.—MEMORANDUM on Class Action determination filed. The court determines that the action may be maintained as a Class action etc. in that any final injunctive relief or corresponding declaratory relief will be appropriate "with respect to the class as a whole" etc. Pltffs' counsel shall serve a form of order and notice within 5 days, to be settled on 3 days' notice. Memorandum on Class action determination set to William E. Hellerstein, (Legal Aid) George

Docket Entries—Queens House of Detenition

DATE	PROCEEDINGS
	Roberts (Dept of Correction) Leonard Bernikow (Asst. Corp Counsel) Bureau of National Affairs.
1-18-71	Stenographer's transcript (3 volumes) filed.
1-19-71	Pltff's Notice to take deposition of Asst. D.A. Finnegan Filed.
1-20-71	Additional summons returned and filed. Thomas J. Mackel srvd on 1-18-71.
1-29-71	Pltffs' notice to take the deposition of Acting Warden Albert Ossakow on 2-10-71 filed.
2- 1-71	By JUDD, J.—Order filed that this action shall be maintained as a class action and that notice shall be given to each person incarcerated in the Queens House of Detention for Men during the pendency of this action etc. and that the Legal Aid Society reproduce the necessary number of copies of above notice and deliver them to the Warden of Queens House of Detention for Men at the time of service of this order etc. (P/C mailed to attys)
2- 3-71	Notice of motion filed, modifying paragraph V (1) of this Court's order of 12-8-71 etc. (ret 2-11-71)
2- 3-71	Pltffs' notice to take the deposition of Correction officer Thorne and Correction Officer Flemming on 2-11-71 filed.
2- 4-71	Stenographer's transcript (3 volumes) filed.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
2- 4-71	Copy of letter to attys noting date for pre-trial conference on 2-11-71 at 10:00 A.M., filed.
2- 8-71	Notice of motion and memorandum filed, pursuant to Rule 12(b)(1)(6), to dismiss complaint against deft THOMAS J. MACKELL etc. (ret Feb 19, 1971)
2-11-71	Certified copy of order with notice of entry filed.
2-11-71	Notice to inmates of QHD, filed.
2-17-71	By JUDD, J.—Order filed amending order of 2-1-71, etc. that the time for posting and delivering the notice specified in the order is extended to 2-22-71. (P/C mailed to attys)
2-17-71	Before JUDD, J.—Hearing on pltff's motion to modify court order of Feb 1, 1971 etc. held in chambers (see order signed 2-1-71) Hearing concluded.
2-19-71	Before JUDD, J.—Deft Mackell's motion to dismiss adjd to Mar 5, 1971 at 10:00 A.M.
2-26-71	ANSWER of defts filed. (srvd 2-19-71)
2-26-71	Affidavit of Leonard Bernikow filed.
2-26-71	Before JUDD, J.—Hearing on pltff's motion for modification of Court order etc. held in chambers —Decision reserved.
3- 5-71	Before JUDD, J.—Deft Mackell's motion to dismiss etc.—No appearances—Motion submitted—Decision reserved.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
3-12-71	Before JUDD, J.—Hearing on deft Mackell's motion to dismiss Motion denied, subject to submission of additional papers. Decision reserved—All papers in (2) weeks.
3-12-71	Notice of motion filed, enjoining deft Thomas J. Mackell from prosecuting Ralph Valvano and Richard Flowers etc. (ret Mar 19, 1971)
3-15-71	By JUDD, J.—MEMORANDUM & INTERIM ORDER FILED. It is ordered that the motion based on F.R.C.P. 12(b)(2), (6) is denied without prejudice to presenting the same matters for consideration by the court etc. and that the defts' motion in the nature of summary judgment and pltffs' motion remain for consideration by the Court. (copy of memorandum & Interim order mailed to Milton Adler, 119—5th Ave. N.Y. Thomas J. Mackell Criminal Court Bldg 125-01 Queens Blvd. Kew Gardens, N.Y. 11415
3-19-71	Affidavit of William A. Nelson filed.
3-19-71	Supplemental affidavit of William A. Nelson filed.
3-19-71	Deposition of Lawrence J. Finnegan, Jr. taken on 1-14-71 filed.
3-19-71	Deposition of John P. Stimecs taken on 1-29-71 filed.
3-19-71	Deposition of Reginald Thorne taken on 2-10-71 filed.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
3-19-71	Continued deposition of Albert J. Ossakow taken on 2-24-71 filed. (P/C mailed to attys)
3-19-71	Before JUDD, J.—Pltff's motion enjoining deft Mackell from prosecuting defts Valvano and Williams etc.—No appearances—Motion marked submitted—Decision reserved.
3-24-71	Notice filed. Motion to enjoin is re-scheduled for Apr 2, 1971 at 10:00 A.M.—Attys notified.
3-29-71	By JUDD, J.—WRIT ISSUED as to DANIEL CASSESSE, filed.
3-29-71	Before Judd, J.—Case Called—Pre-trial conference Held & concluded—Case adj'd to 3/30/71 for Hearing—Trial set down for 4/26/71.
3-30-71	Before JUDD, J.—Case called—Hearing adjourned without date.
3-30-71	Certified copy of writ returned unexecuted, filed.
3-31-71	Defts' first set of interrogatories to pltffs filed.
4- 2-71	Before JUDD, J.—Hearing on motion to enjoin deft Thomas J. Mackell etc.—Motion argued—Decision reserved.
4- 2-71	Affidavit of Lawrence J. Finnegan and memorandum filed in opposition to pltffs' cross-motion etc.
4- 2-71	Pltffs' offer of proof filed.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
4- 2-71	ANSWER of deft MACKELL filed. (srvd on 4-2-71)
4- 6-71	Pltffs' offer of proof filed.
4- 6-71	Deposition of Albert J. Ossakow taken on 2-17-71 filed. (P/C mailed to attys)
4- 6-71	By JUDD, J.—MEMORANDUM & ORDER FILED. It is Ordered that deft Mackell's motion for summary judgment is denied. Pltffs' motion for an injunction against the prosecution of indictment No 3535-70 against Ralph Valvano and Richard Flowers in the Supreme Court, Queens County be denied as moot; that pltffs' motion to require advance information from deft Mackell of any intended prosecution of witnesses etc. be denied; and that this court reserves jurisdiction to enter such further orders as may be appropriate in the premises. Copy of memorandum & order mailed to William E. Hellerstein Legal Aid Society 119—5th Ave. N.Y. 10003; Asst. D.A. Thomas A. Duffy, Jr., 125-01 Queens Blvd. Kew Gardens, N.Y. 11415; Leonard Bernikow Asst. Corp Counsel 1656 Municipal Bldg, N.Y. 10007; Bureau of National Affairs.
4- 8-71	Supplemental Affidavit of Thomas A. Duffy, Jr. Filed.
4-12-71	Affidavit of Richard A. Levy filed.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
4-14-71	Pltffs' request for inspection of documents Filed.
4-15-71	Notice of motion pursuant to Rule 12(b)(1)(6), dismissing pltffs' amended complaint etc. (ret Apr 16, 1971)
4-15-71	By JUDD, J.—MEMORANDUM ON MOTION TO REQUEST FURTHER OBSERVATION BY BOARD OF CORRECTION FILED, etc., The Court has scheduled further hearing on the case for April 26, 1971. It is not clear that resumption of observation of QHD by the Board of Correction at this time is urgent, etc. The Court will therefore keep the pltffs' motion under advisement, pending further developments in the case. (copy of above memorandum mailed to Legal Aid Society, 119—5th Ave. N.Y. 10003; Att: William E. Hellerstein et al; Hon J. Lee Rankin Municipal Bldg, N.Y. 10007, Leonard Bernikow; Hon William J. Vanden Heuvel, 61 Bway, N.Y.)
4-16-71	Before JUDD, J.—Hearing on defts' motion to dismiss etc. Motion argued—Decision reserved —Pltff submit answering affidavit by 4-22-71—Further conferences scheduled in chambers at 2:15 P.M. on issues raised on oral requests.
4-16-71	Pltffs' answer to defts' interrogatories filed.
4-16-71	Defts' memorandum of law filed.
4-22-71	Continued deposition of ALBERT J OSSAKOW taken on 3-17-71 filed. (P/C mailed to attys)

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
4-23-71	Before JUDD, J.—Hearing on deft's motion to dismiss in chambers and not reported on the record—Conference held and concluded.
4-26-71	Stenographer's transcript (2 volumes) Filed.
4-28-71	Before JUDD, J.—Case called—case reported as referred to U.S. Magistrate Vincent A. Catoggio as a special master, for hearing etc.
4-28-71	By JUDD, J.—MEMORANDUM & ORDER OF REFERENCE FILED. It is Ordered that this case be referred to Hon Vincent A. Catoggio, U.S. Magistrate, as a Special Master to take testimony and report his determination of the issues etc., that the Magistrate is requested to submit an interim report of progress to the court by June 1, 1971; etc. that the court reserves jurisdiction to modify this order at any time. (copy of above memorandum & order of reference mailed to U.S. Magistrate Vincent A. Catoggio, Wm. A. Nelson, Esq. et al The Legal Aid Society, 119—5th Ave. N.Y. 10003; Hon, J. Lee Rankin, Corporation Counsel, Municipal Bldg, N.Y.; Hon George Roberts, Comm of Correction; 100 Centre St. N.Y. 10013)
4-30-71	By JUDD, J.—Writ of Habeas Corpus as to Raymond Minori issued. (5-4-71)
4-30-71	By JUDD, J.—Writ of Habeas Corpus as to Daniel Cassese issued (5-4-71)

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
4-30-71	By JUDD, J.—Writ of Habeas Corpus as to Nicholas Disimile issued (5-6-71)
4-30-71	By JUDD, J.—Writ of Habeas Corpus as to Charles Major issued. (5-6-71)
5- 3-71	Pltffs' request for inspection (Defts. McGRATH & OSSAKOW) Filed
5- 4-71	By Judd, J.—Writ of Habeas Corpus issued (DONALD LEROLAND), ret. 5/4/71
5- 4-71	By Judd, J.—Writ of Habeas Corpus issued (THOMAS SYMCOX), ret. 5/4/71.
5 -5-71	By JUDD, J.—Writ of Habeas Corpus issued (JUDSON LAMB) ret 5-10-71.
5- 5-71	By JUDD, J.—Writ of Habeas Corpus issued (ROBERT ROSTON) ret 5-10-71.
5- 5-71	By JUDD, J.—Writ of Habeas Corpus issued (THOMAS SHAUGHNESSY) ret 5-10-71.
5- 5-71	By JUDD, J.—Writ of Habeas Corpus issued (RALPH HERNANDES) ret 5-11-71.
5- 5-71	By JUDD, J.—Writ of Habeas Corpus issued (RALPH LONGBARDI) ret 5-11-71.
5- 5-71	By JUDD, J.—Writ of Habeas Corpus issued (THOMAS MOHLFELD) ret 5-11-71.
5- 5-71	By JUDD, J.—Writ of Habeas Corpus issued (THOMAS KELLUM) ret 5-12-71.
5- 5-71	By JUDD, J.—Writ of Habeas Corpus issued (JOHN ZANCA) ret 5-12-71.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
5- 5-71	By JUDD, J.—Writ of Habeas Corpus issued (OSCAR TIETLEBAUM) ret 5-12-71.
5- 7-71	Writ of Habeas Corpus returned and filed. (Donald Leroland) Executed.
5- 7-71	Writ of Habeas Corpus returned and filed. (Thomas Symcox) Executed.
5-10-71	Writ of Habeas Corpus issued (THOMAS KELLUM) ret. 5-12-71.
5-10-71	Writ of Habeas Corpus issued (FRANK RIZZOTTI) ret 5-13-71.
5-10-71	Writ of Habeas Corpus issued (RALPH VALVANO) ret 5-13-71.
5-10-71	Writ of Habeas Corpus issued (JOHN BENN) ret 5-13-71.
5-10-71	Writ of Habeas Corpus issued (JOHN BURROWS) ret 5-14-71.
5-10-71	Writ of Habeas Corpus issued (EDMUND JACKSON) ret 5-14-71.
5-10-71	Writ of Habeas Corpus issued (WILLIAM LASSITER) ret 5-14-71.
5-10-71	Writ of Habeas Corpus returned and filed. (Daniel Cassese) Unexecuted.
5-12-71	Writ of Habeas Corpus returned and filed. (Nicholas Disimile) Executed.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
5-12-71	Writ of Habeas Corpus returned and filed. (Raymond Minori) Executed.
5-12-71	Writ of Habeas Corpus returned and filed. (Thomas Kellum) Unexecuted.
5-14-71	Writ of Habeas Corpus returned and filed. (Ralph Valvano) Unexecuted.
5-14-71	Writ of Habeas Corpus returned and filed. (William Lassiter) Executed.
5-14-71	Writ of Habeas Corpus returned and filed. (Edmund Jackson) Executed.
5-14-71	Writ of Habeas Corpus returned and filed. (John Burrows) Executed.
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5-14-71	Writ of Habeas Corpus returned and filed. (Judson Lamb) Executed.
5-14-71	Writ of Habeas Corpus returned and filed. (Ralph Longbardi) Executed.
5-14-71	Writ of Habeas Corpus returned and filed. (John Zanca) Executed.
5-19-71	Writ of Habeas Corpus returned and filed. (Oscar Tietlebaum) Executed.
5-19-71	By JUDD, J.—MEMORANDUM & ORDER on motion to dismiss filed. It is ordered (1) that the motion of the city defts to dismiss the com-

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
	plaint be denied; and (2) that pltff's motion to request continued observation by the City Board of Correction be denied. (Copy of memorandum & order mailed to The Legal Aid Society, 119 Fifth Ave. N.Y. 10003; Asst. D.A. Thomas A. Duffy, Jr. 124-01 Queens Blvd, Kew Gardens, N.Y. 11415 Asst. Corp Counsel Leonard Bernikow; Municipal Bldg, N.Y. 10007; Hon George Roberts Dept of Correction 100 Centre St. N.Y. 10013 U.S. Magistrate Catoggio; Bureau of National Affairs)
5-20-71	Writ of Habeas Corpus returned and filed. (Charles Major) Executed.
5-20-71	Writ of Habeas Corpus returned and filed. (Ralph Hernandes) Executed.
5-20-71	Writ of Habeas Corpus returned and filed. (Robert Roston) Executed.
5-20-71	Writ of Habeas Corpus issued (James Evans) ret. 5-25-71.
5-20-71	Writ of Habeas Corpus issued (THOMAS PALERMO) ret. May 25, 1971.
5-20-71	Writ of Habeas Corpus issued (DANIEL CASSESSE) ret. May 25, 1971.
5-20-71	Writ of Habeas Corpus issued (WALTER MATTHEWS) ret May 24, 1971.
5-20-71	Writ of Habeas Corpus issued (LARRY BECKLEY) ret May 24, 1971.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
5-20-71	Writ of Habeas Corpus issued. (RALPH VALVANO) ret. May 24, 1971.
5-24-71	Writ of Habeas Corpus issued. (MILTON SMALLWOOD) ret. May 26, 1971.
5-24-71	Writ of Habeas Corpus issued. (LESSLIE WALDRON) ret. May 26, 1971.
5-24-71	Writ of Habeas Corpus issued. (JOHN RIZZO) ret. 5-27-71.
5-24-71	Writ of Habeas Corpus issued. (RICHARD DILLWORTH) ret. 5-27-71.
5-24-71	Writ of Habeas Corpus issued. (BARRY ROSS) ret. 5-27-71.
5-26-71	Writ of Habeas Corpus returned and filed. Executed. (Frank Rizzotti)
5-26-71	Writ of Habeas Corpus returned and filed. Executed. (Thomas Kellum)
5-26-71	Pltffs' notice to take the deposition of John P. Kennedy on 6-4-71 filed.
5-27-71	By JUDD, J.—Order filed that pltffs be furnished with a stenographic transcript of the proceedings herein at the cost and expense of the United States. (P/C mailed to attys)
6- 2-71	By Magistrate Catoggio, Interim report filed.
6- 2-71	Writ of Habeas Corpus issued as to (PHILLIP EARL THOMAS)

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
6- 2-71	Writ of Habeas Corpus issued as to (RICHARD PORT)
6- 2-71	Writ of Habeas Corpus issued as to (WILLIAM KING)
6- 2-71	Writ of Habeas Corpus issued as to (CLIFF LONG)
6- 9-71	Writ of Habeas Corpus returned and filed. EXECUTED. (John Rizzo)
6- 9-71	Writ of Habeas Corpus returned and filed. EXECUTED. (Richard Dillowth)
6- 9-71	Writ of Habeas Corpus returned and filed. EXECUTED. (Thomas Mohlfeld)
6- 9-71	Writ of Habeas Corpus returned and filed. EXECUTED. (Barry Ross)
6- 9-71	Writ of Habeas Corpus issued as to (EDWARD McINTOSH)
6- 9-71	Writ of Habeas Corpus issued as to (ROBERT HEDGMAN)
6- 9-71	Writ of Habeas Corpus issued as to (JULIO MALLO)
6- 9-71	Writ of Habeas Corpus issued as to (JEROME HOLLOWAY)
6- 9-71	Writ of Habeas Corpus issued as to (DARYL STEVENS)

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
6-11-71	Writ of Habeas Corpus returned and filed. UNEXECUTED. (William King)
6-14-71	Writ returned & filed/executed (LESLIE WALDRON, MILTON SMALLWOOD,) & unexecuted as to CLIFF LONG.
6-18-71	Writ returned & filed/executed (STEVENS, THOMAS) & unexecuted (HOLLOWAY)
6-22-71	Writ returned & filed/executed (MCINTOSH, HEDGMAN & MALLO)
6-25-71	Writ of Habeas Corpus issued as to HOLLOWAY
6-29-71	Writ of Habeas Corpus returned and filed. EXECUTED. (Jerome Holloway)
6-30-71	Writ of habeas corpus returned and filed. Writ satisfied. (Darrel Stevens)
7- 8-71	Writ of Habeas Corpus returned and filed. EXECUTED. (Richard Port)
7- 8-71	Writ of Habeas Corpus returned and filed. EXECUTED. (EDWARD McINTOSH)
7- 8-71	Writ of Habeas Corpus returned and filed. SATISFIED. (Leslie Waldron)
7- 8-71	Writ of Habeas Corpus returned and filed. SATISFIED. (Julio Mallo)
7- 8-71	Writ of Habeas Corpus returned and filed. SATISFIED. (Milton Smallwood)

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
7-20-71	Stipulation filed re Hospital medical records produced by defts etc. filed.
7-26-71	Affidavit of Lawrence J. Finnegan, Jr. filed.
7-26-71	Stenographer's transcript (4 volumes) filed.
7-26-71	Report of Magistrate Vincent A. Catoggio filed.
7-26-71	Notice of motion filed, for an order amended paragraph (1) of this Court's 4/28/71. (ret Aug 3, 1971)
7-27-71	AMENDMENT OF MAGISTRATE'S REPORT FILED.
7-30-71	Writ of Habeas Corpus returned and filed. SATISFIED. (Richard Port)
8- 3-71	Pltffs' objections to Master's report filed.
8- 3-71	Notice of motion filed pursuant to Rule 53(e)(2) to confirm Master's report etc. (ret Aug 19, 1971)
8- 3-71	Affidavit of George F. Roberts filed in opposition to pltffs' motion to amend court's order of reference.
8- 3-71	Before JUDD, J.—Hearing on pltff's motion to amend paragraph (1) of Court's order of reference etc.—Motion argued—Decision reserved.
8-10-71	By Judd, J.—Order setting down date for service by pltff of deft's receipt of objections to masters' report filed, to 8/10/71.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
8-10-71	Pltffs' objections to Master's Report filed.
8-11-71	Memorandum of law filed, in support of pltff's motion that the Master's Report be set aside.
8-12-71	Letter to Judge Judd, from Robert Brady, dated 6-25-71 filed.
8-12-71	By JUDD, J.—MEMORANDUM & ORDER FILED. It is ordered that Robert Brady, a former inmate of Queens House of Detention for Men, be excluded from the class represented by the Pltffs in the above entitled action. (copy of memorandum & order mailed to Robert Brady, # 7-UA-4, 125 White St. N.Y. 10013 and to the Legal Aid Society)
8-19-71	Before JUDD, J.—Deft's motion to adopt report of Special Master etc. adjd to 8-30-71 at 2:00 P.M.
8-19-71	Defts' supplemental memorandum of law filed.
8-20-71	Before JUDD, J.—Hearing on motion for a temporary restraining order—No appearance by Corp Counsel, City of N.Y.—Court to sign order etc.
8-25-71	Memorandum of law filed, in support of defts' motion that the Master's report be confirmed.
8-30-71	Notice adjourning motion dtd 8/30/71 to 9/17/71 filed.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
9-17-71	Before Judd, J.—Case Called for hearing on adoption & confirmation of master, etc—Hearing held & concluded—Decision reserved.
9-29-71	Pltffs' Memo of Law filed
10- 6-71	Notice of motion filed, pursuant to Rule 23C(3) excluding Joseph Kane, et al from membership in the class etc. (ret Oct 15, 1971)
10-15-71	Before JUDD, J.—Hearing on pltff's motion pursuant to Rule 23 c (3) excluding Joseph Kane, argued—Decision reserved—All papers by et al from membership in the Class etc.—Motion argued—Decision reserved—All papers by 10-19-71.
10-15-71	Defts' memorandum of law filed.
10-21-71	Pltff's memo of law in support of exclusion of persons from class action filed.
10-22-71	By Judd, J.—Memo & Order of 10/21/71 granting pltffs motion to exclude persons from class action, etc., as indicated filed.
11-11-71	Report by the New York City Board of Correction etc. dated 1-18-71 filed.
11-11-71	City Defts' memorandum of law filed.
11-11-71	Defts' memorandum of law filed.
11-11-71	Special Master Vincent A. Catoggio's notes on testimony of pltffs' witnesses filed.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
11-11-71	Special Master Vincent A. Catoggio's notes on testimony of defts' witness filed.
11-11-71	By JUDD, J.—MEMORANDUM & ORDER FILED. It is Ordered that the findings in the Special Master's report be vacated, except as set forth herein; that pltffs' prayer for an injunction be denied; that the City defts present to the court within 6 weeks from the date of this a plan for (a) independent and impartial investigation and prosecution of charges etc.; that any unpaid per diem fees of court reporters be paid half by the Legal Aid Society and half by the City defts; and that the court reserve jurisdiction of the issues not determined herein. (copy of memorandum & order mailed to: Milton Adler, Legal Aid Society, 119—5th Ave. N.Y. J. Lee Rankin, Corporation Counsel, Municipal Bldg, N.Y.; George Roberts Dir. of Legal Affairs, Dept of Correction, 100 Centre St. N.Y. Bureau of National Affairs; Magistrate Catoggio.
1-17-71	City-defts. proposed plan filed.
2- 2-72	By JUDD, J.—MEMORANDUM & ORDER signed 2-1-72 filed. It is ordered that Daniel Cassese be excluded ab initio from membership in the class of inmates included in the Valvano suit. (copy mailed to pltff and attys)

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
2- 9-72	Pltffs' memorandum filed, concerning defts' proposal for independent and impartial investigation etc.
3-16-72	Memorandum of Judd, J. dtd 3/15/72 re: conference 3/24/72 in chambers filed.
3-24-72	Stipulation re: conduct of investigation, etc. filed.
3-24-72	Before Judd, J. Case called for conference. Conference held and continued to April 20, 1972 at 4:00 P.M.
5- 1-72	Stenographer's transcript dated 6-11-71 filed.
5- 8-72	Stenographer's transcript dated 5-17-71 filed.
5-17-72	Before Judd, J.—Case called & adj'd to 5/19/72 at 4:30 PM for pre-trial conference.
5-19-72	Before Judd, J.—Case called--Pre-trial conference held & cont'd to 6/14/72 at 4:15 PM
6-14-72	Before JUDD, J.—Case called—adjd w/o date for 2nd pre-trial conference.
8-21-72	Pltffs' memorandum of law filed.
8-21-72	Stipulation of facts agreed to by counsel for both sides filed.
8-21-72	Offer of proof filed.
8-21-72	Copy of memorandum opinion filed, in U.S.D.C. Northern Dist. of California, filed.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
8-21-72	Copy of order & decree filed in U.S.D.C. Dist of Maryland filed
8-21-72	Copy of Opinion of the Court statement of proceedings filed in U.S.D.C. State of Michigan filed.
8-21-72	Copy of Opinion and order filed, in Court of Common Pleas for Philadelphia County Criminal Trial Division, filed.
12- 5-72	Affidavit of Benjamin J Malcolm filed.
12- 5-72	Deft's memo of law filed.
1- 2-73	Letter of Stanley S. Arkin, Esq., filed dated Dec. 29, 1972 addressed to JUDD, J.
1- 2-73	Report of the Special Prosecutor filed.
1- 8-73	Motion to amend filed.
1-11-73	Before JUDD, J.—Case called and adjourned without date for conference.
1-26-73	By JUDD, J.—Order dtd 1-26-73 that NY State Dept of Correctional Services allow inmates listed in order to be transferred to West Street, etc. filed.
2- 1-73	By JUDD, J.—Order filed directing U.S. Marshal for E.D.N.Y. to transport inmates, etc.
2-13-73	By JUDD, J.—Order dtd 2-9-73 allowing transfer of inmates to West Street, etc. filed.
2-15-73	Before JUDD, J.—Case called. Pre-trial conference held and concluded. Case adjourned without date for trial.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
4- 2-73	Notice of motion to consolidate case with 73C-261 and memo of law ret 4-13-73 filed.
4-20-73	Before Judd, J.—Case called—Motion to consolidate marked submitted
4-23-73	Affidavit of Leonard Bernikow in opposition to motion to consolidate case with 73C-261 filed.
4-25-73	Affidavit of Pierce Gerety filed.
9- 7-73	By JUDD, J.—Order dtd 9-5-73 denying motion to consolidate action and setting 10-3-73 at 4:30 P.M. for pre-trial hearing filed.
10- 3-73	Before JUDD, J. Case called Pre-trial held & concluded—Case adjd to 1-21-74 @ 10 AM for trial.
11- 7-73	Letter of pltff to Judge Judd dtd 10-22-73 filed.
12- 5-73	Second Additional Summons issued.
12-18-73	Second additional summons returned and filed/ executed as to Hall & McCoy.
1-18-74	Four affidavits for writs of habeas corpus filed.
1-18-74	By WEINSTEIN, J—Four writs issued.
1-21-74	By JUDD, J.—Case called. Attys for both sides present. Trial ordered & begun. Trial con't to 1-22-74 @ 10 A.M.
1-22-74	Before JUDD, J—Case called. Attys for both sides present. Trial resumed. Trial continued to 1-23-74 at 2 P.M.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
1-23-74	Before JUDD, J.—Case called. Attys for both sides present. Trial resumed. Trial continued to 1-24-74 at 10 A.M.
1-24-74	Before JUDD, J.—Case called. Attys for both sides present. Trial resumed. Pltffs rest. Deft's motion to dismiss denied. Trial continued to 1-25-74 at 11 am.
1-25-74	Before JUDD, J.—Case called. Attys for both sides present. Trial resumed. Trial continued to 1-31-74 at 10 AM.
2- 5-74	Stenographer's transcript dtd 1-25-74 filed.
2- 7-74	Before JUDD, J.—Case called. Attys for both sides present. Trial resumed. Defts rest. Pltff. rests. Trial concluded. Decision reserved. Further briefs to be submitted by 3-7-74. Defts. to answer by 3-21-74
2- 8-74	Stenographer's transcript of 2/7/74 filed.
2-13-74	Certified copies of writs returned and filed/executed. (Smith, Williams, Finley & Bruner).
3-14-74	Stipulation of Facts filed.
3-21-74	Four writs returned and filed/executed.
4- 4-74	Pltff's Post-Trial Memorandum proposed findings of fact and conclusions of law filed.
8- 1-74	Stenographers Transcripts dated 1-21-74, 1-22-74, 1-23-74 and 1-24-74 filed

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
8- 1-74	By JUDD, J.—Memorandum of Decision and Order datd 7-31-74 filed that counting from 9-1-74 no person shall be confined in a cell with another person for a period longer than thirty days, unless on the voluntary written consent of both persons, that the operation of this order be stayed for 7 days to permit defts to determine whether to appeal and apply to the court of appeals for a stay pending appeal, etc. (copies sent to attys)
8-12-74	Notice of motion to amend and correct judgment ret. 9-13-74
8-12-74	Memorandum of law in support of pltff's motion to amend & correct judgment filed
8-12-74	Notice of motion for an order staying implementation of order of Court dtd. 7-31-74 etc. and memorandum of law filed
8-16-74	Notice of Motion, ret 8/23/74 filed re: staying the implementation of the order of this court
8-22-74	Affidavit of Steven A. Herman in opposition to defts' motion for an order staying implementation of order dtd 7-31-74 filed.
8-23-74	Before NEAHER, J.—Case called. Hearing held & concluded. Court extended the hearing to 9-13-74 at 10 A.M. before Judge Judd.
8-23-74	Defts' memorandum of law filed.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
8-23-74	By NEAHER, J.—Order dtd. 8-23-74 granting stay to date of deft's motion pending before Judge Judd filed on document # 210 (p/c to attys)
9-25-74	Reply affidavit of Joel Berger filed.
9-27-74	Before JUDD, J.—Case called. Both sides present. Deft's motion to amend judgment argued. Motion granted. Judgment amended as indicated on the record. Order to be submitted. Pltff's motion to amend judgment argued. Motion granted. Order to be submitted.
9-20-74	Affidavit of Donald J. Tobias filed.
9-30-74	Affidavit of John M. Brickman filed.
9-30-74	Stenographer's transcript of Sept. 27, 1974 filed
10- 2-74	Pltffs' memorandum of law in opposition to defts' motion to alter order of court, etc. filed.
10- 2-74	Affidavit of Joel Berger in opposition to defts' motion to amend judgment filed.
10- 2-74	Letter from Michael B. Mushlin dtd 10-2-74 re judgment filed.
10- 2-74	By JUDD, J.—JUDGMENT dtd 10-2-74 vacating order entered on 7-31-74 and substituting this order in its place, etc. filed. (p/c mailed to attys).

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
10-21-74	By JUDD, J.—Order to Show Cause dated 10-18-74/and memorandum of law for an order of contempt against deft's returnable 10-24-74 at 2:30 with proof of service filed.
10-21-74	Pltffs' memorandum of law re contempt filed.
10-24-74	Before JUDD, J.—Case called. Both sides present. Motion for contempt argued. Decision reserved. Defts to submit further affidavits within one week.
10-25-74	Pltffs' memorandum of law in support of their motion to hold defts in contempt filed.
10-25-74	Defts' memorandum of law filed.
10-25-74	Affidavit of Donald J. Tobias filed.
10-25-74	Notice of appeal filed. Duplicate of appeal & duplicate of docket entries mailed to C of A. jn
11- 1-74	Before JUDD, J.—Case called. Both sides present. Hearing continued on pltff's motion to hold defts in contempt. Hearing concluded. Pltff's motion for contempt is denied.
11- 1-74	Affidavits of Salvatore Latorre & Theodore West in opposition to pltffs' motion for an order holding defts in contempt filed.
11- 1-74	Affidavit of Michael B. Mushlin in support of motion for an order holding defts in contempt filed.

Docket Entries—Queens House of Detention

DATE	PROCEEDINGS
11- 1-74	By JUDD, J.—Order dtd 11-1-74 denying motion for an order of contempt filed on back of document #219.
11- 6-74	By JUDD, J.—Order dated Nov. 1, 1974 that notice of the Court's judgment be given to each detainee in the Brooklyn and Queens Houses of Detention, etc. filed.
11-18-74	By JUDD, J.—Order dtd 11-15-74 for revision of the form (See Court's Judgment) of notice heretofore approved should be made in order to incorporate the provisions. Pltff is directed to settle an order in accordance with this memorandum. (p/c mailed to attys)
11-29-74	Record on appeal certified and handed to Chester Mitchell for delivery to the U.S. Court of Appeals.

A True Copy Attest 11/29/74
Lewis Orgel, Clerk

By (Signature Illegible)
Deputy Clerk

(Seal)

Docket Entries—Brooklyn House of Detention

73 Civ. 261

DATE	PROCEEDINGS
2-26-73	Complaint filed
4- 2-73	Notice of motion to consolidate case with 70C-1390 and memo of law ret 4-13-73 filed in 70C-1390.
4-23-73	Affidavit of Leonard Bernikow in opposition to motion to consolidate case with 70C-1390 filed in 70C-1390.
9- 7-73	By JUDD, J.—Memorandum and order dtd 9-5-73 denying motion to consolidate action and setting 10-3-73 at 4:30 P.M. for pre-trial conference filed in 70C-1390.
10-18-73	By COSTANTINO, J.—Order dtd 10-18-73 that the Clerk of the Court is directed to prepare a summons against the defts and forward same to the U.S. Marshal filed.
10-19-73	Summons issue.
10-26-73	By COSTANTINO, J.—Order dtd 10-25-73 granting leave to proceed in forma pauperis filed.
11- 7-73	Summons returned and filed/executed.
11-20-73	ANSWER/filed
1-17-74	Notice of motion to file amended complaint ret 1-21-74 at 10:15 before Judge Judd filed.
1-18-74	Two affidavits for writs of habeas corpus filed.
1-18-74	By WEINSTEIN, J.—Two writs issued.

Docket Entries—Brooklyn House of Detention

DATE	PROCEEDINGS
1-21-74	Before JUDD, J.—Case called. Attys for both sides present. Trial ordered and begun. Trial con't to 1-22-74 @ 10 A.M.
1-22-74	By JUDD, J.—Order to show cause dtd 1-21-74 for an order to declare action a class action ret 1-28-74 at 10 A.M. with proof of service filed.
1-28-74	Before JUDD, J.—Case called. Motion marked submitted—Decision reserved.
2-13-74	Two copies of writs returned and filed/executed (Moctezuma & Foy).
3-12-74	By JUDD, J.—Order dated 3/11/74 filed that the pltff's motion for leave to submit an amended complaint is granted, etc. (see Order)
3-14-74	Stipulation of Facts filed.
3-15-74	By JUDD, J.—Order dtd. 3-13-74 certifying action as class action, that members of class be notified by defts. of pendency by posting notice in conspicuous places in Bklyn House of Detention to 4-8-74 etc. filed. Copies mailed to parties.
3-21-74	Two writs returned and filed/executed.
4- 4-74	Pltff's Post-Trial Memorandum proposed findings of fact and conclusions of law filed
8- 1-74	Defts post trial memorandum, filed
8- 1-74	By JUDD, J.—Memorandum of Decision and Order dated 7-31-74 filed that counting from 9-1-74 no person shall be confined in a cell with another person for a period longer than 30 days,

Docket Entries—Brooklyn House of Detention

DATE	PROCEEDINGS
	unless on the voluntary written consent of both persons, that the operation of this order be stayed for 7 days to permit defts to determine whether to appeal and apply to the court of appeals for a stay pending appeal, etc. (order filed in 70C1390 #205
8-12-74	Notice of motion to amend judgment and memo of law ret. 9-13-74 filed under 70C 1390
9-20-74	Before JUDD, J.—Case called—Adjd to 9/27/74
9-25-74	Reply Affidavit of Joel Berger filed. in 70C-1390.
9-27-74	Before JUDD, J.—Case called. Both sides present. Deft's motion to amend judgment argued. Motion granted. Judgment amended as indicated in the record. Order to be submitted. Pltff's motion to amend judgment argued. Motion granted. Order to be submitted.
9-30-74	Affidavit of John M. Brickman filed in 70C-1390.
9-30-74	Stenographer's transcript of Sept. 27, 1974 filed in 70 C 1390
10- 2-74	By JUDD, J.—JUDGMENT dtd 10-2-74 vacating judgment entered on 7-31-74 and substituting this order in its place, etc. filed in 70C-1390.
10-21-74	By JUDD, J.—Order to Show Cause dated 10-18-74 and memorandum of law for an order of contempt against deft's returnable 10-24-74 at 2:30 pm with proof of service filed under 70C 1390

Docket Entries—Brooklyn House of Detention

DATE	PROCEEDINGS
10-25-74	Notice of appeal filed. Duplicate of appeal & duplicate of docket entries mailed to C of A. jn
11- 1-74	Affidavits of Salvatore Latorre & Theodore West in opposition to pltff's motion for an order of contempt filed in 70C-1390.
11- 1-74	Affidavit of Michael B. Mushlin in support of motion for an order holding defts in contempt filed in 70C-1390.
11- 1-74	By JUDD, J.—Order dtd 11-1-74 denying motion for an order of contempt filed in 70C-1390.
11- 6-74	By JUDD, J.—Order dtd 11-1-74 that judgment be given to each detainee, etc. filed in 70C-1390.
11-29-74	Record on appeal certified and handed to Chester Mitchell for delivery to the C of A.

A True Copy Attest
11/29/74
Lewis Orgel, *Clerk*

By (Illegible)
Deputy Clerk

(Seal)

Transcript of Proceedings

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

VALVANO, et al, :

Plaintiffs, :

-against- : 70-C-1390

MALCOM, et al, :

Defendants. :

----------x

United States Courthouse
Brooklyn, New York

January 21, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD,
U. S. D. J.

Appearances:

LEGAL AID SOCIETY,
Attorney for the plaintiffs,

BY: STEVEN A. HERMAN, ESQ.,
MICHAEL B. MUSHLIN, ESQ.,
PIERCE GERITY, ESQ.,
M. VICTOR GEMINIANI, ESQ.

ADRIAN P. BURKE, ESQ.,
Attorney for the City of New York

BY: DONALD J. TOBIAS, ESQ.,
-and-
JEFFREY FRIEDMAN, ESQ.

RONALD ZWEIBEL, ESQ.,
Director of Legal Affairs
New York City Department of Corrections.

* * * * * * *

THE CLERK: Civil cause for trial, Valvano v. Malcom.

MR. FRIEDMAN: Your Honor, we had moved pursuant to Rule 26 for written interrogatories requesting the information available thereunder, concerning expert testimony.

We requested that it be specifically stated as to what opinions the experts would give, who they were, what they were expected to testify to.

We understand Rule 37 -- excuse me, 26(b)4(a) subdivision 2 would allow us to come to Court, if the answer showed us that we didn't have enough information to cross examine those experts, we could move the Court for the right to depose the experts.

We never received an answer to those interrogatories. We learned from Legal Aid, approximately a week ago, orally, that Warden Gangler and Dean McKay would testify today.

I only knew that Dean McKay would testify to the conditions upstate and also, I think optional lockout, but I never got the opinions as to which he would attest.

I understand he is scheduled to testify today.

I filed a demand for depositions for this,

as you know without Court order, only attorneys for the plaintiff in this case and that was not upheld. Obviously it was improper, but under the circumstances, since I never got an answer to the interrogatories that they were not sufficient, I could not get an order, and therefore I would ask that they not be allowed to testify until I get an answer and we determine if we need further time to depose them.

THE COURT: I think the provisions of Rule 26 are more serious in relation to a jury trial then they would be in a non-jury trial. It may result in wasting some of my time, but if I don't go ahead now--

MR. GERITY: It is our po[illegible]n that the request for information as to [illegible]tance of the testimony of Dean McKay and Warden Gangler, have substantially been complied with, orally.

THE COURT: That is not really a satisfactory response, but I don't think the issue of a written response was raised when you were before me last week.

MR. GERITY: I would just like the record to show it is my understanding Mr. Friedman said the information that had been given him concerning Warden Gangler would be sufficient. We were in a process -- we have not received responses to our interrogatories concerning the Brooklyn House of Detention, and I

might add we still have not. There was a certain trade-off involved in terms of written work and oral information.

THE COURT: Well, the Brooklyn House of Detention is just a tag end to this. The basic case is Valvano; the Queens House of Detention.

MR. FRIEDMAN: Am I to understand, Mr. Gerity, that you do not expect written interrogatories?

MR. GERITY: No.

MR. FRIEDMAN: I expected before such time as the witnesses testified, to receive those interrogatories in written fashion rather than the general comment indicated.

MR. HERMAN: Approximately 55 interrogatories were given me on Friday by Mr. Tobias and they have all been answered.

Warden Gangler had so many people in his office working on them over the weekend and so they were provided to Mr. Tobias on Friday.

MR. TOBIAS: There were 55 or so informal questions I drew up and submitted in an informal way, and although the information received is helpful indeed, I'd still like to depose Warden Gangler. It is as simple as that.

MR. FRIEDMAN: As far as Dean McKay is concerned, we just received two oral responses.

THE COURT: Well, we wind up on the day of trial with a lot of preparation not completed which in a normal case might justify adjournment, but I will proceed and I will bear in mind the defendant may have a right to further latitude in cross examination than would be the case if they had had the normal opportunity for pre-trial deposition.

MR. FRIEDMAN: I appreciate that.

I know there are certain inmate witnesses in court today, and they could testify, which would give us an opportunity to depose the two experts this evening, which would cause as little delay as possible.

We deposed the inmate witnesses present today.

MR. HERMAN: The schedule of Warden Gangler and Dean McKay are extremely tight and our other witnesses and it has been a real problem. The warden has been here since 10 o'clock, and I think it would be a severe inconvenience to him. He must get back to his institution. He cannot stay many more mornings. He gave this to me as almost a favor.

THE COURT: Well, the only risk in not deposing them before their formal testimony is that

you may ask some questions and you will get answers you don't want, but I think that is not so serious in a non-jury trial where we will have a considerable background, and especially since Warden Gangler testified in the Rem case at considerable length.

I am going ahead.

Now, we have here --

MR. HERMAN: Steven Herman, your Honor.

MR. MUSHLIN: Michael B. Mushlin, your Honor.

MR. GERITY: Pierce Gerity.

MR. GEMINIANI: M. Victor Geminiani.

MR. TOBIAS: Donald J. Tobias.

MR. FRIEDMAN: Jeffrey Friedman.

MR. ZWEIBEL: Ronald Zweibel --

THE COURT: For the Corrections Department?

MR. ZWEIBEL: Director of Legal Affairs for the Corrections Department.

THE COURT: Now, which plaintiffs are here?

MR. HERMAN: Raymond Mochtazuma; Ronald Foy; Charles Williams; Robert Finlay and Ronald Smith.

THE COURT: Is Mr. Valvano here?

MR. GERITY: No.

THE COURT: My last letter to him was returned. Do you know where he is now? I wrote to him at 606 Winthrop, Kings County Hospital.

MR. GERITY: He is no longer a member of the plaintiff class in Queens.

THE COURT: Mr. Mochtazuma and Mr. Foy are from Brooklyn?

MR. GERITY: Yes; the other three are from Queens.

THE CLERK: Two page document marked Plaintiff's exhibit 1 for identification.

(So marked.)

THE COURT: Let the record show that since there was no court reporter there, that the Court visited the Brooklyn House of Detention on the afternoon of January 16, 1974 in the Queens House of Detention on the morning of January 17, 1974.

Both sides were represented at the Brooklyn House of Detention and only the plaintiff at the Queens House of Detention where I stayed for lunch with the warden and some of the officials and I am sure, if I accepted his testimony, everything told to me, the defendants did not lose by not being represented.

However, I will try to keep my mind separate as to what is testimony and what is not.

We are prepared to proceed.

MR. Herman, are you going to examine the first witness?

MR. HERMAN: Yes.

Warden Gangler.

THE COURT: I have had a lot of dealings with Warden Gangler on Federal matters, but I will decide this case on the evidence here.

L O U I S J. G A N G L E R, having first been duly sworn by the Clerk of the Court took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. HERMAN:

Q Warden Gangler, I'd like to show you the document marked Plaintiff's exhibit 1, and I ask you to state for the record what it is.

A A resume of my educational and experience background, which I prepared.

Q And all the facts in here are true?

A Yes.

MR. HERMAN: Your Honor, I have shown this to defense counsel and they will stipulate as to the contents of the resume.

At this point I would like to move that Warden Gangler be recognized as an expert witness in the field of corrections.

MR. FRIEDMAN: I think there is a misunderstanding.

I said I would stipulate but we agreed to let him state this was true under oath.

THE COURT: He has so stated. I will permit him to testify as an expert, subject to cross examination as to the accuracy or relevancy of any portion of his testimony.

MR. TOBIAS: I wonder if he is going to testify as an expert or as to his own institution or to penology and institutions in general.

I will stipulate to his own institution.

THE COURT: His record shows he has worked in penitentiaries in Iowa, Kansas, Ohio, California, Texas, Washington and Florida as well as in New York; one, back in 1952 to 1955 having been a State institution. I will accept him in both respects subject always to the fact that like a jury, I am not bound to accept an expert's testimony even if uncontradicted.

I would like to point out that I do think I should have, on both sides, one counsel dealing with one witness.

Mark that.

(continued on the next page.)

IG:GA
T1R2 AM

THE CLERK: Plaintiff's Exhibit 1, now marked in evidence.

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(So marked.)

Q Warden Gangler, what is the primary purpose of the Federal Detention Center?

A The primary purpose is to serve as a facility in which to detain prisoners undergoing trial in United States District Court, Eastern District in Brooklyn, and the Southern District in Manhattan, as well as a few Federal detainees originating in the District of New Jersey.

Q Warden Gangler, where is your institution located?

A 427 West Street, between 11th Avenue, or 11th Street and Bank Street.

Q What percentage of the population of your institution is pre-trial detainees?

A About 80 percent of our population is pre-trial detainees.

Q What are the other 20 percent?

A The other 20 percent would be represented by cadres which we have to maintain and place sentenced prisoners, with usually short sentences, six months or less.

We have on occasion immigration offenders lodged with us for security purposes. We also have on occasion State prisoners housed with us while on Federal writ, and on occasion State prisoners housed with us prior to removal to a State

facility.

Q Warden Gangler, what is the stated capacity of your institution?

A The stated capacity as determined by the Federal Bureau of Prisons is 225 capacity.

Q What was your population this morning?

A This morning it was 356.

Q Warden Gangler, what is the average length of stay of inmates in your facility?

A The average length of stay, if we take the extremes on both ends, short and long, would be about 45 days.

Q Do you have people there as short as one day?

A We have people who are there for as short as three hours.

Q They are counted in your average?

A Yes.

Q Could you describe the living quarters that you have for detainees at your institution?

A We make no distinctions between detainees and sentenced people because of the nature of the physical plan.

We have basically two floors on which the men are quartered. We have 192 men on the third floor, and we have 163 men on the second floor.

We have two basic types of housing arrangements.

We have what is known as a C Tank. We have those on both floors. A C Tank consists of four cells, two men per cell; a total of eight. It also consists of a little dormitory into which the C Tanks open up.

We also have what is known as the dormitory tank. These, as opposed to the original, consist of a sleeping area in which we have double-bunks and also contain a dormitory-type or dayroom into which the men can go and watch television.

Q Warden Gangler, let me just clarify something: Before, you said you had C Tanks which were groups of four, two-man cells, and that they opened up into, you said, a dormitory. Did you mean a dayroom?

A Yes, a dayroom for their use.

Q Now, how many -- And do you have any single cells?

A We have three single cells in the whole facility. One of these is actually a cell, known as S4 inner area, which we call maximum overflow.

We have two other single rooms which we have devised and converted into psychiatric observation rooms for people with severe emotional problems who may well be psychotic, or are to be studied to determine competency.

Q How do you assign men to the various living areas that you have?

A Men are assigned to living areas based on, all

too often, limited information that comes with the man by either the Marshal or the arresting officer, or one of our own staff, from the other institutions, bringing the man to us.

Information, as soon as it is gathered, is put in the hands of a supervisor, who assigns the man to quarters. Example: If the defendant has a known history of violence, or has an escape record, or we are told by the official depositing him that he has high bail and has escaped in the past, the supervisor taking precautionary measures, would put him in the maximum security unit until this information is digested by a classification committee, and until more information may be gotten, particularly prisoner interviews, and then a decision is made whether to keep him in maximum unit, put him in a more secure unit, or perhaps put him into the general population.

Q How often do you review a man's case in maximum security?

A Every man in max and maximum overflow and segregation, as well as the two people who might be in the psychiatric observation rooms, their cases are reviewed twice weekly by the classification committee to determine if there is increase in custody warranted, decrease, or any change of progress.

Q Warden Gangler, could you describe the extent of confinement that men of the various living areas, maximum security

and general population have?

A General population is the area where we have most of our prisoners.

The time that they are released from their units, and I want to indicate that in our C four-cell units all the four cell doors are never locked, because they open into a dayroom, so there is freedom of movement, whether it be a dormitory-type setup or a cell setup.

Q The dayroom is always open to people in general population?

A Right.

Now, with regard to locking-in; into the dormitory, dayroom complex, or cell-dayroom complex, the cells are secured. The outer doors are secured 10:30 P.M. and opened again at 6:00 in the morning. This is the only time during which these men are confined to their combination sleeping-recreation area. With the exception of those hours, the institution is pretty open.

Men are free to go from the second to the third floor from one tank on the third floor to another tank, and the same is true for the second floor.

Now, as I say, this is the general population.

(continued on next page.)

3 fls

Q Let me break in for a second. Do you have a gym at West Street?

A We have an auditorium serving as combination gym, chapel, showplace, ping-pong -- no gym, as such, but we have a mini-gym arrangement whereby 12 men can exercise at any one time on an apparatus.

Q During the day, can the inmates and general population go there whenever they feel like?

A We open the auditorium when we have inclement weather. We have roof periods for recreation. The gym is opened at 1:00 o'clock. There is no movement there in the morning. It is opened at 1:00 o'clock for mainly the maximum security unit. These men are given the option of going or not. They always go. They have their recreation period, free from the general population for about an hour or hour and a half. Then they are put in quarters and then it is open for the regular population.

In the evening we open the auditorium at about 5:30 until about 8:30. That is for the general population. We do not permit maximum security men in the auditorium in the evening hours.

Q Would you describe the level of confinement the inmates in maximum security are under?

A Maximum security we have what is known as the

C type of arrangement. We have four cells comprising one unit. We would have C-1, 2, 3, and 4. These are the modules. In each of these four, we have four cells and in each cell two men.

Again, each of these two units has, in addition to a sleeping area, its own little dayroom. That dayroom consists of a long table. It has a TV set; with individual showers in each of these, so if necessary we can reduce the movement of the men.

Those men, likewise, have access to a corridor which is adjacent to the dayroom. It is in this corridor we place the telephones for their use. That is always secure. At no time can any man in maximum security leave the confines of that corridor without being escorted to the particular point of the institution where he is needed. Those are locked up at 10:00 o'clock at night also.

Q Warden, why do you permit so much movement without your institution?

A Movement is permitted, I think, in an effort to perhaps serve as a valve or an outlet for many of the frustrations that prisoners can experience.

I think it permits an individual, if he is hot under the collar, if you will, to get out and walk a little bit to get rid of some of the frustrations and anxieties we

know can be experienced in prison.

Secondly, I think it is good from a philosohical as well as penalogical standpoint. Puts a little faith and confidence in people. It gives them a little responsibility and more importantly it permits the staff to know these people; to see how they are walking about, in prison parlance, to get to know them; see how they react with other people and this information then is certainly at our disposal.

Q Warden, do you see the freedom that you allow as being an asset to your security; to the security of the institution?

A I believe it is an asset because I feel that if we would lock people in more, we'd have that many more bars to tap. They'd have that many more bars to cut and there is no need in cutting bars if they are going to have access to the general institution. It is easier to check a door, vent and window than to check thousands of bars behind which they are confined.

Q Warden, where do the men in your institution eat their meals?

A We have a central dining room with 14, four-man tables. All men in the institution, with the exception of the two who would be confined to the psychiatric unit and the men occupying the seggregation unit, S-5 and 6, go to the main

dining room three times a day.

Court cases, of course, get their sack lunches.

Even men in the hospital able to make it to the dining room are permitted and do eat in the central dining room. The men are fed off the hot food cart.

Q Is there a reason why you have the men eat in the mess hall as opposed to cells or dormitories?

A The reason is several fold:

Number one, despite the efforts of technology, I find it hard to come up with a food cart that will serve hot food. We have tried many different things. It doesn't work. So, in the interest of providing hot meals, we do it and, again, it enables even the maximum security to be taken down under escort. It gives them something to break the monotony of being confined to their units.

We haven't lost security. Maximum security eats and then they are returned to their quarters and the rest of the population eats. I think it is a way to humanize the place, if you will; by giving some mobility and it reduces complaints. At times, legitimate complaints about cold fold.

Q Were do the men detained at West Street keep their personal belongings?

A Personal clothing -- there is no personal clothing. We issue uniforms. Their own civilian court

clothing is maintained on the first floor.

Combs, shaving gear, books, books, court papers are maintained in a locker in the housing unit; a small locker, a drawer, an area, maybe three feet by four feet woutl be the size of the locker.

THE COURT: Three feet by four feet for each prisoner?

THE WITNESS: That's right.

THE COURT: Or a drawer?

THE WITNESS: NO, the size of the cabinet is about three by four.

THE COURT: How high is it?

THE WITNESS: About two and a half feet. We double-stack these lockers. When we get crowded the men share lockers.

Q Warden, do you think it is important for men to have a place to put their belongings, their personal belongings?

A I feel it is important enough that we have provided them where they can purchase padlocks in the commissary to protect their property.

Again, we are talking about doing what we can to humanize the place and this is one effort, one way to do it. Some of these people have valuable law papers and books, and I think it is encumbent upon us to provide as much

security for their property and welfare as possible.

Q Warden, how many officers are there on each floor during the day?

A On each floor during the day -- well, from 6:00 o'clock in the morning until 10:00 o'clock at night we have two officers on each floor plus one full-time officer in the maximum overflow segment and psychiatric area.

Between 10:30 at night and 6:00 o'clock in the morning there was one officer on each floor and one officer in the max overflow segment and psychiatric area.

Q Warden, is a new federal detention facility presently being constructed in New York?

A There is a new metropolitan correction center under construction now with a completion date of June 30th. It is right behind the current federal courthouse for the Southern District.

Q Did you have anything to do with its design?

A Yes. I was involved in some of the planning, not only for the physical structure but also for the program content we hope to establish in the new center.

Q How many stories high is your new federal detention center going to be?

A It is a 13-story complex, but four bi-level, so it is eight. However, considering the bi-level, the total

numerican count is 13.

Q How will people travel between floors?

A There will be a series of three elevators. Two will be secure. The other will be nonsecure; controlled in a control room, electronically and also by hand operation.

(continued on next page.

DIRECT EXAMINATION

BY MR. HERMAN: (continued)

Q Warden, can you describe the living quarters that are being built in this new facility?

A There is a capacity of 449. There is a 60-man dormitory, and again, this is a bi-level dorm with 30 on each level, and with the exception of the 60-capacity dormitory, all will be single rooms, including the 29-room hospital diagnostic complex.

Q Warden, why did, or did you make a choice to have rooms rather than cells?

A I didn't really have to make a choice. The choice was made by the architects, the staff of the Central Office, which is a mere repetition of their thinking about single rooms, single-cell occupancy.

Q Do you concur in that judgment?

A I support it, and concur in it.

Q And why?

A I believe that to the extent possible, an individual ought to preserve some of his individualism when he enters an institution, regardless of why he is there. I think the lack of privacy has been one of the most severe criticisms of our institutions and others, and I think it is only good in a penalogical sense that we try to give an individual as much

privacy as possible and restore whatever degree of individualism we can to him, and I think this is an excellent way.

Many of our people will never end up in an institution, and we are trying to spare them the inconvenience of prison to the greatest extent possible.

Q Warden, could you describe the living areas that will be available in the new facility?

A I will consult my notes.

(Pause.)

A (continuing) Here are some dimensions of the new facility, and basically it is a very, very simple arrangement.

The rooms are all single, with the exception of the dormitory. Each room will be 7 feet 9 inches wide and thirteen feet deep. Ten feet of that is actual living area. There are 3 feet constituting an alcove.

The dormitory is for 30 men, they will be in an area of 36 by 31.

Now, each of these living units will also have a multi-purpose where the men will eat, recreate. There will be a visiting area, educational learning center. The multi-purpose room is 34 by 34.

The units are broken down so that there will be roughly 46 men on a floor.

We have admissions, orientation floor, medical and diagnostic units, constituting one floor.

We have a 60-man dormitory, and in that area there are 44 individual rooms, right adjacent to that dormitory.

We have got the flexibility enough in this housing arrangement to pretty well accommodate any type of detainee we would get.

Q Warden, will the doors to the rooms be locked?

A It will be possible to lock these doors, and we are now developing a plan which is known as a functional unit approach to housing.

Each of these units has the capacity to become a complete honor unit, and we propose this by giving a man a key to his own room, or it has the capacity of becoming maximum security by retaining both keys ourselves.

That is what is on the drawingboard, but it has that capacity.

Q What access to the multi-purpose dayroom area will the general population inmate have?

MR. TOBIAS: I object.

We were patient in allowing much of this examination to come in. We wanted to get some idea of the new facility but I don't really think that all the specifics the Warden is going into is relevant.

We are examining two institutions, really, and I am not really sure how a proposed institution will aid our examination.

THE COURT: I have been wondering as I listened whether this has any bearing on any institutional requirements, which are all I can deal with.

MR. HERMAN: We are going to try to show that the City did not detain the plaintiffs under the less restricted means available, and that are being tried, and are actually working in different places, and we would like to show there is testimony as to the City's facilities.

We will put on evidence as to what the City facilities are like, and we would like to show other correctional practices.

THE COURT: Mr. Tobias' objection is to the plans of a contemplated facility, which I don't think can very well be used as a standard that must be imposed in existing City institutions, and I think you have shown enough about the proposed facility, and you ought to go on to something else, considering the limited time I am going to have.

Q Warden Gangler, at your present institution at West Street, have you ever held inmates who testified in this

court concerning the Queens riot of 1970?

A Yes, we did.

Q How many did you hold?

A If memory serves correctly, I think the total number was between 30 and 35; not all at one time. Some were brought down, went to court, and returned to their facilities.

Q Warden Gangler, which housing units were these men held in?

A With the exception of one of the prisoners who came out of a mental facility, all the prisoners were kept in regular population.

Q General population?

A General population.

MR. HERMAN: Nothing further at this time, your Honor.

THE COURT: Mr. Tobias, you may proceed.

CROSS EXAMINATION

BY MR. TOBIAS:

Q Warden Gangler, could you please tell us what percentage of the inmates at the West Street institution are presently incarcerated for crimes of a violent nature?

A I have 19.6 percent of our population that I would classify as in for acts of a violent nature, including bank robbers, kidnappers, assaults on Federal officers.

Q In looking at this 19.6 figure, could you please break this down or give us some idea as to what percentage of this figure you would classify as street crimes; crimes against the ordinary, every-day person?

A Well, the greatest percentage of these -- 16 percent are bank robbers; men who have gone into banks with weapons; men who have intimidated and on occasion shot bank guards. Others could be in for driving a getaway car.

The difference between the 16 percent would be 3.6, who would be people with weapons violations, assault on Federal officers, on Postal officers, kidnappings, skyjackings, interstate theft, hijacking of trucks in which violence occurred.

Q So then, would it be fair to say that only 3.6 of your inmate population is presently incarcerated for what we'd call general violent attacks on the ordinary population?

MR. HERMAN: Objection.

THE COURT: Objection sustained.

From what I gather, these are not the mugger-type you may have in a City institution.

What bearing that has, I will hear argument on.

Q Warden Gangler, what is the average education level for the inmate population in your institution? Do you have any figures on that?

A Yes.

The average education level is 10.5.

Q In your experience in the areas of correction, would you say the 10.5 figure is high, relative to other institutions you worked in?

A I would say it is high.

Q What is the average income figure for inmates at your institution?

A $178 per week, as reported by them on survey.

Q Do you think, then, that from your own experience as someone with vast experience as a Warden in correctional institutions, do you think this is a high figure, relatively?

A I'd say it is relatively high.

Q Now, Warden, you testified that your present facility at West Street is broken down to dormitory facilities, and also what you called C-unit cell facilities.

Am I correct in saying that the C-unit facilities have two men per cell?

A Yes, sir.

Q What is the size of these C-units?

A The C-unit has a cell which is 5 foot 3 inches wide, 8 foot high, and 8 foot long.

The dayroom --

Q I am not asking about the dayroom.

A Just the cells; 5 foot 3 by 8 by 8.

Q What is in the cell, in terms of furniture in the cell?

A There is a double-bunk and a commode and a locker.

Q Is there a sink?

A There is a sink in some.

Q But not in all?

A Not in all.

Q How many of the cells have sinks?

A I don't know.

THE COURT: If there is no sink, do they have freedom of access to a wash basin somewhere else?

THE WITNESS: Yes, your Honor.

In the dayroom there is a sink; a wash basin on one side of the dayroom.

(continued on next page.)

Q I take it these beds you have described are double-bunker type beds, or one atop the other?

A Yes. In the cells, they are fastened to the wall.

Q What is the stated capacity of this insitution?

A The stated capacity is 225.

Q How many inmates do you presently have?

A 356.

Q When the cell was originally built -- excuse me. When the institution was originally built, did you contemplate this institution as one with single or double cells? I mean one inmate per cell?

A You mean when my predecessor built it.

It was initially built in 1922 to hold 225 prisoners based on the single-cell capacity with the dormitories I outlined. That then, the lock-up was an institution for 225 prisoners.

Q Due to growth in population and expansion of legislature in the federal system, you have had to add inmates to the existing facility?

A Yes.

Q Does this go for the cells as well as the dormitories?

A Yes.

Q So, your dormitory facilities are also overcrowded to an extent?

A Yes.

Q So you would characterize your facility as one that is overcrowded?

A Yes, sir.

Q What was the largest number of inmates in the institution?

A 418 a year ago December.

Q So I take it then that at that particular time you had practically doubled your stated capacity, give or take 18 or 20 inmates?

A Yes, sir.

Q Now, although you alluded to this briefly, I'd like a little expansion on the next subject: How do you determine who is to be placed in a two-man cell and in a dormitory?

A Under ideal conditions, when our count is not as high as it has been, we have a separate unit, D-10, admissions, orientation unit.

Ideally all new members are placed in D-10. They are observed for a couple of days during which information is gathered on them.

It is a dormitory-type, double bunk, no cells.

As information is gathered, these men are what we call classified.

If all things are equal and they do not require closer supervision, they go to a D tank, dormitory-type tank. Then, they request to go to the C.

The cell-type tank is preferred because it offers more privacy and the man gets on a wait list. However, some men prefer not to go to the C tank. They want to stay in a big where their friends or codefendants are.

Q Where do you think it is more dangerous for an inmate to stay; in the C or D?

A The more dangerous should be given less contact with the bulk of the population and I would put them in the C tank.

Q The cells?

A Yes, sir.

Q Now, in your classification process, does the criminals past records influence your determination as to where they go?

A The past record as we develop it or find out about it are one of the many factors determining where an individual is housed.

The past record could include minor offense, serious offenses.

Basically, what our people are looking at is the nature of the current offense, the amount of bail; the time he did before; whether he did time before; was a weapon involved in the current offense; does he have a known psychiatric system; what his reaction has been under confinement before.

These are all factors considered in determining the degree of custody and subsequently the housing assignment of a particular prisoner.

Q How much priosn personnel is involved in this classification process?

A There is a chief social worker, case worker, correctional counselor, the quarters lieutenant who happens on the shiift, as well as a chief correctional supervisor; roughly, five.

Q I take it also that while the inmates are being observed during classification week the correctional guards or officers also play a role in classification?

A Yes, because they give our quarters lieutenant or supervisor information about an individual's adjustment as he observes it from his relationship with him on the floors.

Q How many inmates do you have being received at your institution per week?

A The average is 30 to 35 a day.

Q Now, do you think that the fact that you are a small institution enables or assists you to classify in this way --

MR. HERMAN: Objection.

THE COURT: The word "small" may be controversial but it is smaller than Brooklyn or Queens.

Q (Continuing) -- in comparison to the institutions discussed in this trial, do you think your relative smallness -- do you feel that enables you to classify in this manner?

A To an extent. But the process we get involved in is duplicated at bigger institutions in our service.

Q Warden Gangler, I'd like to draw your attention to something you said when you testified earlier in the Rem proceeding.

Do you remember saying that the institutions at that particular trial revolved around contact visits, and you spoke about your classification procedure --

MR. HERMAN: What page?

MR. TOBIAS: Page 9.

(Pause.)

MR. TOBIAS: I may get back to it later. I don't remember an exact page.

Q Now, did you say that when an inmate arrives at

your institution it takes about a week to determine his final classification as to where he will be placed?

A I don't know if I specified a time. It generally takes a week and perhaps longer in some cases.

Q Do you have FBI reports available at your disposal on each individual coming in?

A No.

Q Parole reports?

A Not only --

Q How extensive are the parole reports that you do receive?

A What parole reports?

Q On the inmates.

A Probation and presentence reports?

Q That's right. Excuse me.

A We do not have presentence reports on prisoners getting to us. They are in the process of getting picked up. We have presentence reports, I might add, after sentence has been imposed and in many cases after they have left us.

Q I'd like to ask you a hypothetical. If you were in a large institution that didn't have all of the personnel at your disposal or you did not have the personnel for institutional reasons, which would enable you to classify a prisoner so quickly, where would you place a prisoner during

this period of time?

MR. HERMAN: Objection.

The question is not specific. We don't know the size, what the institution is for, whether any of these things are available.

MR. TOBIAS: The question is subject to connection, and I think the connection will be certainly quite clear when we present out case in chief.

THE COURT: I will let the witness say whether the question is adequate.

A Again, please?

Q If you were a warden in a facility, a facility in which the personnel was not available to assist you in making the classification and didn't supply you with the type of background on the inmate you have at your facility, where would you place the inmate; in a cell or dormitory facility; keeping in mind institutional security as a primary goal.

A Well, that is a two-barreled question. Number one, you're hypothesizing it is not available --

Q Correct, or it is available to a much lesser degree than is available to your institution, obviously.

A We have -- again, from my experience -- we have a pretty sophisticated classification system for a jail.

Less sophisticated classification systems can

be developed and my reaction is that there are priorities that have to be set and one of the greatest ones is easily setting down a group of people who can get information on the individual.

My reaction, if I had nothing, hypothetically -- by all means, my job is to keep people there for the courts, and I would put them where I felt they needed to be, even it meant an interview.

People do not come to us void. They leave impressions; their actions. We have information.

So, hypothetically, I find it difficult to conceive an individual about whom we know nothing comparatively speaking.

Unquestionably, if I knew nothing about him, I would put him where I felt he should be so that the man was there for trial.

I have answered your hypothetical with a somewhat hypothetical answer.

THE COURT: Put him where; in a cell, inthe first instance?

THE WITNESS: Yes.

(Continued on the next page.)

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R6

CROSS EXAMINATION

BY MR. TOBIAS: (continuing)

Q How many incidents of violence occur among the inmates of your institution?

A I believe have about two adjustment or disciplinary reports per week.

I would expect we have had five fights in the last year.

We have had one assault on an Officer, and maybe two assaults on other prisoners in which one case there was a weapon involved; a pipe.

Now, as to disciplinary reports, we categorize them.

Q As these figures you just gave us -- They cover how long a period?

A Last year.

Q Now, during this last year, of this period of one year, was there ever much of a disparity in inmate population at your institution?

A Generally, the average was probably about 380, 375 to 380; maybe 385.

Q How high did it go during the year; 380 up to what figure?

A A year ago December it was roughly 418. Then it

got down to 390, 380, averaging 375, 380.

Q Do your figures indicate that the figures, as they rise, the incidents of violence go up?

A What is the definition of "incidents of violence"?

Q Fights; attacks on a guard, incidents of sodomy -- incidents. You are well aware of the type of violence that occurs at prison institutions. I don't think I have to define that for you.

A I will say that the chances --

Q I am not talking about "chances."

I am talking about specifically, whether or not you have got any figures that show when the population rises, there is a disproportionate amount of violence?

A I have no figures on that.

Q What is the average length of time of an inmate's stay at your institution?

A Forty-five days.

Q Do you have any idea of the persentage of inmates who stay over two months?

A Maybe 30 percent.

Q Only 30 percent? How about over three months?

A I am merely guessing. I have no figures. I am not prepared to say accurately.

Q Do you think it is safe to say, however, that only

a very, very minimal number of inmates stay over six months?

MR. HERMAN: Objection, your Honor.

THE COURT: Overruled.

A Trial prisoners, yes.

Q Well, that's 90 percent of your population?

A Yes.

Q Do you think that the longer an inmate stays at an institution, the greater the chance of his committing a violent crime or act while in the institution?

A No. That is -- If I can comment -- the stay, in and of itself, is immaterial. He can be there two years -- We have had men at our place for two years, and some not that long.

I want to qualify my statement. I am concerned about what is happening to the man while he is there. That is, the sine qua non of violence related to length of stay in Federal Detention Headquarters.

Q I think during your testimony on direct testimony, you testified to tension, characteristic of a stay in any institution of this type, and it would seem to me, since there is a greater amount of tension as the stay progresses, it would seem to me personally that the chances of an untoward incident happening at the institution would go up.

A Providing there are no valves or releases for that tension.

There is tension. It arises with increased

population. Violence can erupt if the release valves are not introduced to lessen the tension, and that is what I wanted to say in connection with what seemed to be a dogmatic answer before.

Q Do you feel, as an inmate stays in an institution for a period of time and gets to know his fellow inmates better and better as the weeks go on, that this creates a potentially dangerous situation, relative to the situation where the prisoners are in and out constantly and really don't get to know each other?

A It can and it cannot.

Q I am asking for your opinion as an expert in the area of prisons.

A At times the length of stay, the time the men are together, can be to advantage if they are looking for someone; this type of thing.

Q Well, in terms of potentially negative acts, or destructive acts, from your viewpoint as a warden, and prison official, do you think prisoners who get to know each other over a long period of time can become a more dangerous element as opposed to prisoners who don't know each other because they are constantly in and out of the institution?

A They can, but that is one of many variables that would determine whether or not they do; the length of time

that they are there.

THE COURT: Let me ask something else: Your number of inmate fights seem so much less than the recent fights at Willowbrook, where we deal with mentally retarded, that I wonder if your average schooling of 10.5 grade does not have something to do with the amount of violence.

In other words, would there be more violence if you had less-educated prisoners?

THE WITNESS: I would probably have to go back and look at the individual reports on a one-by-one basis. I have no relationship for or against it at this point.

THE COURT: All right.

CROSS EXAMINATION

BY MR. TOBIAS: (continuing)

Q Now, from your testimony on direct examination, I take it that a prisoner at your institution can go from floor to floor virtually unobstructed by a security officer or prison official?

A Yes.

Q As long as he is not in maximum security?

A At the prescribed times, yes.

Q Does this mean that, say, a hundred prisoners in your institution, pursuant to a pre-arranged agreement among

themselves, agree to meet in a certain room and take over a wing, they could do it?

A They could, yes.

Q At the present time, how do the prisoners get from one floor to another?

A Steps.

Q Is there a stairwell?

A Yes, a rear stairwell; first, second to third, and then an inner stairwell going from the second to the third only.

Q Do you have correction officers or prison guards -- I don't know the parlance --

A Correction officers.

Q (continuing) -- stationed in the stairwells?

A None, other than the regularly assigned floor officers. There are no officers assigned specifically to the stairwells.

Q During the daytime, I take it, you have two officers on the floor?

A Yes.

Q How many men?

A 192 on the first floor, and 162 or 163 on the second floor.

Q So, the men would not be supervised, but in an

area enclosed within itself.

There would be a door --

A There is a door on the floor which is open. They have free access, ingress, egress at any time that it is open.

Q But while on the stairwell, there would be no way that a correction officer could see the inmates?

A Let me describe the stairwell. It is open, with mesh, expanded metal, and the prisoner is visible from the time he leaves the third floor until he gets to the second floor. It is a one U-turn stairwell, so he is completely visible at all times. It is not enclosed, as such. It is a steel stair with expanded metal around it.

Q But while the inmates are between floors, would a correction officer -- they'd be able to look through the mesh?

A Yes, standing on the top looking down. That is the inmates' stairwell.

The rear stairwell is a regular staircase. There is no way for an officer to look down from the third floor and see farther than the first step on the second floor.

Q The inmates use that rear stairwell?

A Yes.

Q So there are inmates out of the purview of the correction officers?

A The rear stairwell, yes.

Q Would it be possible, then, for an inmate, if he didn't like another inmate, to wait for him; use that staircase, and assault him while he is in transit?

A It is possible.

Q Has that ever happened?

A I don't know if it has ever happened.

If it did happen and we were not about to see it, I guess we don't know.

Q I guess so.

Now, if the inmates can utilize the full scope of your institution, certainly at will, at any given point of the day, I take you don't know the whereabouts of every inmate, or one particular inmate?

A The particular inmate?

Q The particular whereabouts of an inmate.

If I came to you and said, "I'd like to know, Warden Gangler, where is Joe Smith" at a particular point in time, could you tell me what part of the building he is in?

A With one call I could, yes.

Q Without one call?

A No. He has free access to the institution.

Q Now, during what hours are the inmates limited or prevented from going from one floor to another? What is the

final hour at which they can do this?

A 10:30 until 6:30 in the morning, when the count clears.

(continued on next page.)

CONTINUED CROSS EXAMINATION

BY MR. TOBIAS:

Q What is the number of correction officers per floor from 6 to 10 or 6 to 10:30?

From 6 P.M. to 10:30 P.M., how many correction officers per floor?

A We still have the two officers per floor, up until 10:30.

Q Warden Gangler, if -- in your experience -- if large groups of inmates are incarcerated for periods of three or six months or more, do you think it would be necessary to limit their movements during lock-out hours?

A Not necessarily.

Q Do you remember earlier in my cross examination, I asked you whether or not it would be possible for inmates to meet at a preordained time, let's say, 100 of them, and take over a wing of the institution and you admitted that the movement you allowed at your institution would make this situation possible?

Do you think if the inmates became friendly over a long period of time and built close relationships between themselves, do you think in the light of the admitted possibility of a hundred of them overpowering the one or two guards guarding a floor, do you think directions would have to be taken by

yourself or staff?

A If that was accompanied previously with information we had gotten about the particular individuals involved in the proposed mass demonstration --

Q As you know, some of the things are fairly simultaneous, so let's say, you couldn't get that information. Do you think it is your job to take these precautions or rely on informers you have in the prison -- I don't know.

A I would do it if I had reliable information.

Q Let's say you couldn't be so sure about how reliable your information would be about the daily events of your institution; that you had no channel of communication from the inmates to your office.

What precautions would you have to take in your daily operations in terms of limiting this movement to prevent this occurrence?

A As an extreme precaution, I would limit movement, but again, we are talking about a hypothetical case --

Q No, we are not. We are talking about the case where the inmates are in the institution for a longer period of time than they presently are in your institution, and a situation where the inmates know each other --

THE COURT: Let me add a couple of other factors: Where the inmates have not had contact

with their lawyers for six weeks; perhaps where they have not been to court for a couple of months and where they have lower income and lower educational background, and greater proportion of street crime, muggers, violent offenses, charged against them.

THE WITNESS: These are all factors which would certainly contribute to explosiveness, and certainly, I would take precautions.

Again, as I mentioned earlier, it is not how long an individual is there, but the influence of these other factors; not being able to see an attorney, going to court or not going to court, and what have you, that adds a little more to the hypothetical case.

THE COURT: In other words, in my mind, Mr. Tobias, I cannot separate this case completely from the Wallace and McLoughlin cases, and other situations that affect city inmates.

Q Now, I understand, that even during the late hours of the evening and early morning hours, although you don't allow inmates to go from one floor to another, you do allow them complete access to the dayroom, and I take it their cells are open?

A Yes, sir.

Q How many guards on the floor during these hours?

A One on each floor. One on each floor, plus an escort officer available to escort. There is only one floor officer and one quarter officer.

Q How many inmates are on a typical floor?

A 192 on the third, and 163 on the second.

Q So, that is 192 with their doors open?

A With the doors to their sleeping area open and the dormitory and the doors to their cells in the cell arrangement. In both instances, with the doors to the dayroom -- they are confined to their own dayroom area whether it be cell or dormitory arrangement.

THE COURT: But for all practical purposes, the total floor is pretty much open during these hours.

A The corridors are not open.

Q Warden, has anyone escaped from your institution in the last five years?

A Yes. We have had -- the last escape occurred on January 21, 1971, when seven offenders left the institution.

Prior to that, the last one was in June of 1970, when one man left the institution.

THE COURT: Before that, there had not been any for many years?

THE WITNESS: Before that, I think it had been

22 years.

Q Do you know whether any of the seven inmates were cell or dormitory inmates?

A The last seven all were regular general population prisoners.

Q What does that mean?

A They had access to anyplace in the institution.

Q But do you know whether or not they were incarcerated in a cell or dormitory area?

A In the dormitory area, and in the cell area as well; some out of both.

Q At the present time, does the West Street facility have a high school equivalency program?

A No.

Q Is there any remedial education program?

A No. We have no educational staff member available. We have five students, who conduct leisure time activity, and education courses, unofficial education courses as the need arises.

Q Do you have any remedial education program?

A On occasion, prisoners will instruct other prisoners in Spanish --

Q Anything formal?

A No.

Q How about an arts and crafts program; do you have that?

A No.

Q An institution newspaper?

A No.

Q Do you have any cultural programs?

A Other than non-religious -- rather, other than religious, no.

Q In your opinion, if an institution fails to offer a wide variety of programs, does the availability of lock-out time take on increased importance?

A Repeat that, please?

Q If an institution fails to offer a variety of programs for the individual, does the lock-out time he is given take on increased importance?

A Yes, it does.

Q At the new Federal facility that you referred to previously, will the inmates have access to all the floors, similar to what theyhave now at the West Street facility?

A No.

Q Is this because the institution is going to be a fourteen story institution?

A No, sir.

Q Is it because they have a contained dayroom area,

or their own floor, and don't need the access?

A No.

Q What is the reason?

A For the reason -- the reason for having non-mobility, is that we are going to set this institution up on what is known as a functional unit basis.

We will have light groups of people with light treatment needed, being treated in terms of those needs.

There will be no need for mobility.

Q At the West Street institution, how often do you have head count?

A We have seven official head counts per a 24 hour period.

Q How long does each head count take to perform?

A Anywhere from 12 to 15 minutes.

Q Does that include the process of getting the inmates back in the cell, or only the counting procedure?

A We have a five minute warning bell sounding for five minutes prior to the time of count. There is adequate time for the men to get in their cells at their bunks, and at the second bell, count is made and runs for fifteen to twenty minutes, maybe.

In several of these instances, they are already there so there is no need for movement.

Q Now, how much time is consumed during the meals;

each meal, specifically?

A That would depend on the count, but right now with 356, depending on the type of meal, it is roughly thirty or forty five minutes per meal, shortened or lengthened, depending upon the menu.

Q Certain meals take up to an hour?

A On the occasions when we have steak, I would say, yes. On the other hand, it is less.

Q Who cleans the dining room facility?

A The prisoners.

Q Is this included in the hour or forty five minute time period?

A No; we have a detail working in the food service department, responsible for that.

Q So, an inmate, if he is not assigned to the detail, he eats and leaves and does not get engaged in cleaning up?

A Other than taking his own utensils over to the dish room, yes.

MR. TOBIAS: Nothing further.

(Continued on next page.)

REDIRECT EXAMINATION

BY MR. HERMAN:

Q When do the head counts take place?

A Again, starting with the -- there is one at midnight; one at 3 a.m.; one at 6 a.m. during the day. The first one is at 8 in the morning and then no count until 4 p.m.

Q So, the men are never called back to their cells between 8 a.m. and 4 p.m.?

A They are called back to their cells on two occasions; that would be at the noon meal and evening meal but they are brought back merely to be in pocket, so to speak, while we feed maximum security units.

There is another count at 7:30 p.m. and again at 10 o'clock p.m.

Q Warden, you said that you had approximately -- that approximately 19 percent of your population were involved in crimes of violence. Would you give us a breakdown of what the rest of your population contains in terms of crimes?

A I can mention it. I don't have the specific percentages.

There are motor vehicle thefts, acts of violence, a large percentage of narcotic violations and we have at this point 48 percent and this could include users. But by and

large the professional traffickers in the narcotics traffic. We have several cases of rape. We have postal violations. We have some forgery, Selective Service violators, conspiracies involving non-violence, destroying Federal Government property.

Q What percentage would you characterize as white-collar crime?

A I'd say probably nine and a half or ten percent.

MR. TOBIAS: I object, your Honor.

I don't really think that Warden Gangler is qualified to make a breakdown as to what white-collar crime is. I think it is a subjective category.

THE COURT: You can examine as to what it is. I am not sure myself. I presume it includes income tax --

THE WITNESS: Income tax, certain types of embezzlement, stock fraud. In some cases even forgerers would be considered white-collar crime.

Q Warden, you said 19 percent of your population are in for crimes of violence. Are those 19 percent -- is that 19 percent housed in your maximum security unit?

A Not necessarily.

Again, the violent crime is one thing that the committee or people look at in determining quarters.

People with a gun in their hands in the streets are a little different than people locked up in prison for other crimes so again there are so many variables there it is hard to make a generalization as to who would go in without looking at other variables.

Q Warden, before you testified there were very few instances of violence in your institution. Do you have any opinion as to why that is so?

A Well, I think part of it is attributable to the fact that a staff gets to know these people through observing them as they intermingle with staff certainly and with other prisoners.

I think the flexibility and the movement within the outer security perimeter has something to do with that.

There is an excellent relationship, I think, between prisoners and the staff, to a point where we set up positions, not only as correction counselors, but four who are on the floors observing, listening and helping.

I think the climate of the institution is such that the staff is willing to talk to prisoners and the prisoners are willing to vent, if you will, on occasion, and communicate with the staff, which goes back to my comment on the release valve.

THE COURT: These correction counselors are

prison employees separate from the guards?

THE WITNESS: Yes. They are recruited from the ranks of the correctional officers. Their qualifications indicate they shall have 40 hours of correctional counselor training obtained in Atlanta and Dallas.

These are correctional officers who have been promoted to more responsible positions and who are adept at talking to people and listening and counseling.

THE COURT: Do inmates ever tend to regard them as spies reporting them?

THE WITNESS: No. They are there to help the prison help himself.

Q One other point I want to clarify and that concerns the maximum security unit: In that security unit are the inmates ever kept locked out from their dayroom?

A Locked out from the dayroom?

Q Ever locked into the sleeping area?

A No, they are not unless -- the only time that would occur -- and we have the capacity to single-lock a cell -- is if an individual became unmanageable and we had to control him or place him in the psychiatric unit or someplace and then the door would be locked until we got help to get him.

As a general course, no.

MR. HERMAN: We would like to have Warden Gangler's resume admitted into evidence.

THE COURT: I think it is received already.

MR. HERMAN: No other questions.

THE COURT: You said in the beginning that many of the people in the Federal House of Detention never end up in a federal institution. Do you have any figures as to those sent to confinement after?

THE WITNESS: I don't have them right here.

THE COURT: What do you mean?

THE WITNESS: Well, they end up with probation or they go to a halfway house or their cases are dismissed or they are reinstated on probation.

THE COURT: But you don't know what percentage?

THE WITNESS: No, sir.

THE COURT: And what is your total staff? You say you have now around 350 prisoners.

THE WITNESS: Our total staff is 93 and 53 is of the guard type. The balance is administration, food service employees, classification and parole, business and fiscal, mechanical and hospital.

THE COURT: What about your correctional counselors?

THE WITNESS: We have four of those. They are not counted in the 93, or rather the 53 correctional.

THE COURT: 53 correctional officers handle the whole institution 24 hours a day, seven days a week?

THE WITNESS: From 10:30 at night until 6 in the morning we have six actual employees running the institution with one on each floor, a man in a control room, a lieutenant in charge, a man in the segregation unit and a man receiving a discharge. We have six staff members with the entire institution and by the way, that is midnight to six. I am sorry.

THE COURT: How many people leaving the institution for court or elsewhere every day?

THE WITNESS: The court lists are averaging between 60 and 70. We had a total admission/discharge rate of 33,000 last year and that includes taking them out to court and back.

THE COURT: Any other questions?

MR. TOBIAS: One further question.

RECROSS EXAMINATION

BY MR. TOBIAS:

Q How many of your inmates are first offenders; do you have any idea of what percentage?

A I would say 30 percent and if I look at it from

the other side about 70 percent repeaters.

THE COURT: We will take a short recess.

(Recess taken.)

THE COURT: All right, Mr. Herman. Your next witness.

MR. HERMAN: Ronald Foy.

THE COURT: All right.

R O N A L D F O Y , having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HERMAN:

Q Please speak up so the judge and the city lawyers can hear you clearly.

A Yes.

Q Mr. Foy, how old are you?

A Thirty-two.

Q Mr. Foy, do you have any prior convictions?

A Yes.

Q How many?

A Two.

Q What were they for?

A Grand larceny and burglary.

Q When were you convicted?

A '61 and '68.

The one in 1968 I have a reversal on because I wasn't given a fair trial.

Q Mr. Foy, did you serve any time -- have you ever served time in a state penitentiary?

A Yes.

Q Are you presently detained in the Brooklyn House of Detention?

A Yes.

Q What are you presently accused of?

A Armed robbery and burglary.

Q Mr. Foy, for how long have you been in the Brooklyn House of Detention?

A Close to five months now.

Q Mr. Foy, what cell are you detained in?

A 5 lower A2.

Q Do you have a cell partner?

A Yes.

Q Mr. Foy, could you tell the Court how you and your cell partner get along in terms of living in your cell?

A It is hard to say. From time to time we don't and at times we do. The living conditions there -- if we have separate hours --

Q What do you mean?

A He likes to stay up at night reading when I go to sleep at night. I get up in the morning when he sleeps. I have to get up every morning to get my own food because he has bad hygienic habits I don't like.

Q Like what?

A Putting his finger in his nose and putting his hands on my plate of food and handing it to me.

Q Mr. Foy, where do you eat your meals?

A I have to eat on the bed.

Q Where does your cell partner eat his meals?

A He sits on the desk by the door.

Q Mr. Foy, when you were in an upstate institution where did you eat your meals?

A In a mess hall, nine out of ten times.

Q Did you prefer to eat your meals in a mess hall or cell?

A In the mess --

MR. TOBIAS: Objection.

THE COURT: Overruled.

A (Continuing) In the mess hall.

Q Why?

A You can actually see your meal being served to you.

As it is now, at the Brooklyn House of Detention, the

help, as they call the inmates that serve the food, they are in a hurry. They take the food. It's mixed up. You don't know who's handling it. They don't wash their hands; conditions like this. So, I'd rather see what I am getting and who I am getting it from.

Q Mr. Foy, is there enough room for you to eat your meals in the cell?

A Not really.

Q Would you explain why not to the judge.

A I have to sit on my bed and I don't think it is proper to sit on your bed to eat -- right? You don't have enough time. My cell partner eats first and then me. There is a limited amount of time to pick up the trays but they expect both of us to be finished at the same time.

Q Mr. Foy, when you have to move your bowels or urinate, where do you do that?

A I have a toilet that is exactly about a foot and a half away from the head of my bed.

Q Does your cell mate use that toilet also?

A Yes.

Q Does this present any problems?

A Yes, because of the distance and by urinating into water it splashes and comes on the head of my bed. I can't switch my bed to the other end.

Q Why not?

A The cold draft that comes in -- I end up with a head cold the next morning.

Q Mr. Foy, are you able to sleep at night?

A Not if my cell partner is up.

Q Does he stay up often?

A Yes.

Q Mr. Foy, when you were in an upstate institution did you have a cell partner?

A No.

Q Did you prefer having a single cell?

A Yes.

Q Tell the Court why.

A Well, the system upstate is much more to your advantage -- right?

You have recreation periods in your cell. I was allowed to bring drums in my cell, bass fiddles, things like that, carving materials. I had time to do things in my cell and my cell was much bigger than the one I have now. I could move my bed. I had a desk that I could move from one side to the other.

That is my reason why.

Q Mr. Foy, do you keep any personal property in your cell?

A Yes.

Q What kinds of property do you have?

A My clothes for court and my legal papers.

Q Where do you keep your clothes for court?

A I have two places I keep them. I have a line hanging from the rear of my bed to the bars but this is something they call illegal. They take it and cut it down.

I also have a basket they issue you to keep your clothes in under the bed. But the rats want next material. They take my clothes, eat them up and take the threads out of the clothes to make nests.

Q Has that ever happened to you?

A Yes.

Q When you leave your cell -- Do you have any law materials?

A Yes.

Q When you leave your cell where do you leave your law materials or other personal property?

A If I am leaving the floor I will take it with me, if I am going up to the tenth floor. That's as far as I would go.

If I am going to court I give it to somebody else to hold for me. I have a problem with my cell partner. He likes to go through my things. I don't know his reason.

Q How do you know that he has gone through your things?

A I have a certain way of keeping things. When I come back they are all disorganized.

Q Mr. Foy, could you describe a typical day that you spend at the Brooklyn House of Detention from the time you get up in the morning until you go to sleep at night?

A Yes, sir.

We get up about 6:30 in the morning to eat --

Q How are you awakened?

A With a lot of noise -- really. They are passing out the food. If you wanted to sleep, you couldn't sleep because of the noise.

The food --

Q How do they serve the food?

A It is passed through the holes in the bar onto a table on a tray; a couple of slices of bread with some jelly, a bowl with milk and a box of cereal. On some occasions eggs or orange.

Q And you eat your meal?

A Yes.

Q Then what happens?

A Nine out of ten times -- I don't like to sleep in the morning -- I wait until the 8 o'clock count. 15 minutes

later the lock-out comes. I walk to the day room.

In the day room you have a TV or radio. You can have one or the other. You can't have them both because they are both in the same room and there is one table in there that four men can play cards or there are 18 chairs for 60 men. So, that's part of the day.

Q What do you do in the day room when you go in there?

A Nine out of ten times you can't go in there. It is too cold.

We use it for a handball court.

Q How many men can play handball at one time?

A Only four.

(Continued on next page.)

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Q Is anybody else in the day room when the four men are playing handball?

A Nobody wants to be in there --

MR. TOBIAS: Objection, your Honor.

THE COURT: Sustained. I will strike it out.

The question was were there any other people in there.

THE WITNESS: They don't want to be there for the cold so it is only the four.

Q If you are not in the day room or playing handball, what do you do?

A Most of the men go to the upper gallery. It is warmer up there. They go up there and sit on the floor playing cards, chess, checkers.

Q And then how long does this lock-out period last?

A Until 11 o'clock.

Q And then what happens?

A You are locked in until 1 o'clock and then you are fed.

The 1 o'clock bell rings and you come back out.

Q What time are you fed?

A Usually 15, 20 minutes after you are locked in; 11 o'clock, say 11:30.

Q When do they collect your trays?

A 15 to 12.

Q And then you stay in your cell until 1 o'clock?

A Yes.

Q And then you have another lock-out?

A One o'clock.

Q What do you do during that lock-out?

A The same thing.

Q How long does that lock-out last?

A Until 3 o'clock.

Q And then what do you do?

A Three o'clock you are locked in until the 4 o'clock count.

After the 4 o'clock count they start feeding you, about a quarter to 5. That's according to if they have an officer. Nine out of ten times they prefer to feed the officer before the inmates. The food may be on the floor. They have it in a wagon. I hear the wagon. I can see the wagon when it comes out but the officer is out eating and they won't feed us until he comes back. I have complained about that before. All they have to do is call the Captain and let us get the food instead of letting the food get cold sitting there.

Q What do you do after dinner is served, Mr. Foy?

A Six o'clock at night when we come out we usually watch news, TV until 9 o'clock.

Q And then what do you do?

A Lock in.

Q Mr. Foy -- until when?

A Until the next morning.

Q Mr. Foy, do you ever leave the fifth floor?

A Only if I am going to the court or to the hospital or to the commissary.

Q Where is the commissary?

A They send us up to the gym to go to commissary. In the gym they have one basketball court, one ping-pong table, one volley ball court, one set of weights for the whole floor.

MR. FRIEDMAN: That is not responsive to the question.

THE COURT: Yes, but it can be brought in. Otherwise, I will overrule the objection.

Q Describe what you do when you go to the commissary.

A You walk -- they call out a certain number of men. You walk down the hall. It is only about ten yards to the commissary.

Q From where?

A From the gym.

You go in there and buy what you want and then go back

to the gym; sit around, wait until you go back downstairs.

Q Do you go to the gym at any other time?

A No.

Q Mr. Foy, do you participate in any programs at the Brooklyn House of Detention?

A As far as I know there is only one program there and that's school. I would say two, now, also arts and crafts, but it is very difficult for an inmate to get in there.

Q How do you know?

A People have put in slips and I put in slips for people and they have never been called for it.

Q Mr. Foy, just before you described your daily routine in the Brooklyn House. Would you please describe now your daily routine when you were in an upstate penitentiary?

A Well, that's hard to say. It is altogether different.

I went to work confinement in the morning after leaving the mess hall.

I had a room of my own; no supervision.

We had showers and lockers in there.

We could do just about what we wanted in the room until it was time to go to mess hall.

After we went to mess hall we returned to our jobs and at the end of the day we would go to the yard.

From the yard we would plan different activities -- you know?

Q Did you go outside into the air at all when you were upstate?

A Every day.

Q What was that?

A Every day.

Q Mr. Foy, did you have a physical recreation program upstate?

A Yes.

Q How often?

A Every day.

Q How often do you get physical recreation at the Brooklyn House of Detention?

A Now, I would say maybe once a week.

Q Is that at the time you go to the commissary or is there another time?

A No, that's on our own. We plan our own programs on the floor.

Q What do you do?

A A number of things. We have like -- My floor is run different than any other floor in the building. The side I am on, we are more united than any other floor. We get together on activities and things like that; make plans

for different tournaments.

Saturday night we had a spelling tournament. Last night they had a raffle. Like, we plan our own activity.

Q Mr. Foy, do you have any physical exercise on your floor?

A No. Because of my condition I don't participate in most of them. They are too rough for me.

THE COURT: You wear a crutch or rather, carry a crutch. What is the reason for that?

THE WITNESS: I was injured in a Correctional Department van.

Q Mr. Foy, have you ever had a fight with your roommate?

A No. Because I feel I am able to restrain myself. It takes a lot to push me over but nine out of ten inmates have fights in the cell --

MR. TOBIAS: Objection.

THE COURT: Sustained.

Q Have you witnessed fights between other inmates?

A Yes.

The night before, that would be Sunday night, there was a fight among two inmates. One switched cells with another one. He didn't like his cell partner or that's what he told the other inmates, but the reason was the man was a homosexual

and he didn't want to be in the cell with him. He doesn't like to generate --

MR. FRIEDMAN: Objection.

This is based on hearsay.

MR. HERMAN: This is relevant to understanding what Mr. Foy --

THE COURT: Yes. We are getting into an incident involving two other people and it is going to be a little hard to cross-examine on this.

THE WITNESS: May I say something?

THE COURT: Let's take our lunch break now and we will resume.

I guess it will be 2:15 before I finish my 2 o'clock matters.

Mr. Tobias, I didn't mention before releasing Warden Gangler -- you might have wanted to get some more information from him. Is there anything you didn't get because you had no right to depose him?

MR. TOBIAS: We are satisfied with the information we elicited on cross-examination.

THE COURT: Very good.

2:15.

(Whereupon, a luncheon recess was taken.)

AFTERNOON SESSION

THE COURT: Mr. Foy, you are still under oath.

RONALD FOY, having been previously duly sworn by the Clerk of the Court, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION

BY MR. HERMAN: (Continuing)

Q Could you describe for the Court your feelings when you have to go to the bathroom with another man in your cell?

A I feel it is degrading.

If I am sitting on the bed in my cell and my partner goes to the bathroom, I have to move to the other side of the cell for the odors for one thing; and I don't like to be present when another man is going to the bathroom.

Q Since you have been Bronx House of Detention have tended to be more nervous than you were when on the street?

MR. FRIEDMAN: I object. The question is leading.

THE COURT: I will let him answer, but you are right.

Q What was your mental state while in the Brooklyn House of Detention?

A For instance, my cell partner has problems with his family. He lost contact with his family and I have to act different toward him in the cell and he acts different toward me. There is a tension between the two of us because of this condition.

Now, we don't get along. I sometimes sit at my bed and write letters and he runs the water and wets my letters up. I don't say nothing but it bothers me -- these things -- tension. It gets on my nerves.

Q Mr. Foy, you feel there is a sufficient amount of room in the cell for the two of you?

A No, definitely not.

MR. HERMAN: No further questions at this time.

THE COURT: Any cross-examination?

MR. FRIEDMAN: Yes, your Honor.

CROSS-EXAMINATION

BY MR. FRIEDMAN:

Q Mr. Foy, you testified on direct examination that you put requests in for other people for programs.

Do you recall that you answered -- I engaged you in an examination before trial, on January 17, 1974, at 11:50 o'clock in the morning, and at that time I propounded the following question to you?

MR. FRIEDMAN: If you will bear with me.

It was a series of questions ending in the following question:

"Have you ever put an interview slip in?"

To which the answer indicated is:

"No, because I know it is useless."

Q (Continuing) Do you remember that question and answer?

A Yes.

Q And is it true that you participated in no programs organized programs at the Brooklyn House of Detention and never put in a slip for participation in such programs?

A Not for myself, but for other inmates.

Q Either you put in interview slips or not.

MR. FRIEDMAN: "Have you ever put an interview slip in?"

And the answer was:

"No, because I know it is useless."

A Not for myself.

Q And you admit that when the following question was propounded of you:

"Have you ever put an interview slip in?" You did answer: "No."

A Yes.

Q You have testified that there is a problem when

you are eating because they expect both people to be done at the same time and this has sometimes caused you to hurry your meal; is that correct?

A Yes.

Q Would you like more time in which to eat your food?

A Yes, definitely.

Q Thank you.

You have also testified that your cell partner goes through your things and you know that because they are disorganized when you return to your cell?

A Yes.

Q You are incarcerated at the Brooklyn House of Detention?

A Yes.

Q During the lock-out time at the Brooklyn House of Detention, are the cell doors locked or open?

A Open.

Q Are they accessible to everyone on the floor?

A Not really.

Q Can anyone walk into your cell if the door is open?

A Not without being noticed.

Q But, is it possible for someone to walk in your

cell?

A Yes.

Q So you can't really state to a reasonable certainty that it was your roommate as opposed to someone else on the floor that messed up your possessions?

A After going to court six or seven times and finding the same thing, it has to be the same person.

Q But anyone can get in your cell?

A It would have to be noticed.

Let me state this --

Q Just yes or no --

THE COURT: Just answer the question. I will draw the inference I think proper.

Q You stated you prefer to eat in a situation where you can see the food being prepared?

A Yes.

Q Have you ever eaten in a restaurant?

A Yes.

Q That was of your own choice that you ate in a restaurant?

A Yes.

Q I think you testified on direct examination that you engage in nonphysical activities on your own floor, but at the same time you testified that you played handball in the

lockout, the dayroom. Is the dayroom on your floor?

A Yes.

Q So, you do engage in some physical activity on your floor?

A No.

THE COURT: Do you play handball there?

THE WITNESS: They used the dayroom for handball because it is too cold for anything.

Q Do you play handball?

A No.

Q Have you ever played handball on the floor?

A No.

MR. FRIEDMAN: Please bear with me for a moment.

THE COURT: Sure.

(Pause)

Q Do you remember also at the same time when we conducted the examination before trial on January 17, 1974, the following questions and answers; the questions being propounded to you and the answers being given:

"Do you participate in any of the programs offered here at this institution?

"Answer: I participate in only one program. I try to play handball. They told me from the hospital that I should try to exercise, so I can

get rid of the pains that I have in my legs and back. We have officers that smuggle in balls. They don't issue balls here."

I am skipping a part of the answer not relevant.

"So you go in there and work up a sweat. So we play handball. Four men go out, there is only four men, right. The first team wins and then two more come in."

Do you recall me having propounded that question to you?

A Yes.

Q And do you recall having answered that way?

A Yes. I tried to play handball --

MR. HERMAN: I would like to have the whole answer read into the record.

THE COURT: You think what Mr. Friedman skipped may be relevant?

MR. HERMAN: Yes, I do.

MR. FRIEDMAN: All right. I will read the whole thing.

"Answer: I participate in only one program. I try to play handball. They told me from the hospital that I should try to exercise so I can rid of the pains that I have in my legs and back.

We have officers that smuggle in balls. They don't issue balls here. So, they sneak them in from the street and they give us a rubber ball, a handball. The dayroom is too cold for anybody to go in to play cards, watch TV or listen to the radio, so we go in there and play handball. So you go in there and work up a sweat, so we play handball. Four men go out, there is only four men, right. The first team wins and then two more come in until lock-in time but that is the only activity that we have on the floor."

THE COURT: All right.

Q So, when I asked you, did you participate in any of the programs and you said you tried and played handball, what you are really saying is that you didn't participate in any program?

A I tried. I am unable -- in other words -- from the word "try" -- unable -- an effort.

THE COURT: What does that mean; that there isn't time for you to get a turn or you can't hit the ball?

THE WITNESS: I am like physically disabled as far as keeping up with the other inmates.

THE COURT: Do you play and not play well, or

do you not play at all?

THE WITNESS: I can't play well, because of my handicap.

THE COURT: Well, do you play?

THE WITNESS: I try. That's all I can say to that.

Q Were you ever in the service?

A No, sir.

Q Have you ever attended any jazz concerts at the Brooklyn House of Detention for Men?

A On Thursday there was a concert held.

THE COURT: You went?

THE WITNESS: I was only there for three minutes.

Q Why did you leave after three minutes?

A I had a visit and a long distance phone call to make.

Q And as I understand it, you eventually canceled your visit and made the long distance phone call?

A Yes.

Q And was that at your own expense or the expense of the institution?

A My own expense.

Q Do you make daily phone calls?

A On the floor, yes.

Q Approximately how many phone calls a day do you

make?

A I use the phone exactly eight minutes a day.

Q On how many different occasions?

A That's the total; three times a day.

Q Three times a day for a total of eight minutes?

A Yes.

Q When you were incarcerated upstate, did you make three phone calls a day?

A No. Because they don't have that type of program set up up there.

Q Have you ever participated in any movies being shown; been a spectator at any movie being shown?

A My movie dates always coincide with my hospital or court dates. I haven't seen one movie since I have been locked up, four or five months.

Q So, is it true, you are out of the institution quite frequently?

A Yes.

Q Up until last week you were out of the institution three days out of the five working days a week?

A Yes.

MR. FRIEDMAN: With the Court's indulgence.

(Pause.)

MR. FRIEDMAN: Nothing further.

THE COURT: ANything more?

MR. HERMAN: Nothing further.

THE COURT: You may step down.

Thank you, Mr. Foy.

(Witness excused.)

(Continued on next page.)

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MR. HERMAN: Our next witness is Antonio Negron.

A N T O N I O N E G R O N , having first been duly Sworn by the Clerk of the Court, took the witness stand and testified as follows:

MR. TOBIAS: Before the direct examination begins I would like to inform the Court we have not had a chance to depose Mr. Negron, and I wonder if we could have the same type of treatment we had with respect to Warden Gangler.

THE COURT: You put the questions you feel proper. If you think you need anything more, I will consider a request.

DIRECT EXAMINATION

BY MR. HERMAN:

Q Would you please speak up so both the Court lawyers for the City can hear you?

A A Yes, sir.

Q How old are you?

A 32.

Q Are you married?

A Yes.

Q Do you have any children?

A Yes, I have six children; three girls and three boys.

Q Where do you live?

A 235 Skillman Street in Brooklyn.

THE COURT: That is right near where I was brought up; next to Nostrand Avenue.

THE WITNESS: Up the block.

Q Have you ever been convicted of a felony?

A Yes.

Q When.

A 1963.

Q What were you convicted of?

A Possession of narcotics.

Q Did you serve any time in an upstate penal institution?

A Yes, I took five years.

Q Where did you serve it?

A In Sing Sing, then Dannemora, Attica and Greenhaven.

THE COURT: They moved you around a lot.

THE WITNESS: Yes.

Q Were you recently detained in the Brooklyn House of Detention?

A Yes.

Q How long were you detained there?

A About sixteen months.

Q What were you awaiting trial on?

A A trial on murder.

Q You were accused of murder?

A Yes.

Q Have you had your trial?

A Yes.

Q What was the disposition?

A I was acquitted; not guilty.

Q By a jury?

A Yes.

THE COURT: Who represented you?

THE WITNESS: Mr. Livingston, Park Place in Manhattan; Mr. Lombardo.

THE COURT: I was wondering if it was Legal Aid. They have had some long detentions that ended in acquittals, too.

MR. GERITY: We don't do murder trials.

THE COURT: Oh, yes, that's so.

Q While in the Brooklyn House of Detention, how many cells did you live in at various times?

A When I first entered the penitentiary in 1972, I was in the fourth floor detox -- When you're hooked on drugs or methadone program.

Then I was transfered to the eighth floor, which

I was up there close to fourteen, fifteen months, and then transfered to the ninth floor. I was up there for about a month until recent time, when I was discharged.

Q What personal property did you have in your cell?

A Well, I had my clothes and my personal letters, pictures, postcards, and my cell partner had his own personal things; clothes and stuff, we have from our homes, our wives brought us.

Q Did you also have a cell partner?

A Yes.

Q Where did you keep your personal property?

A I kept it in a basket they gave us way back in November -- no, December, 1972; a plastic bag, container, laundry bag. We put our clothes in there on the floor. It's no good, anyway.

Q Why is that?

A It seems like the mices were making houses in your clothes, your letters; cockroaches.

Q Did anything ever happen to your personal property?

A We brought to the attention of the Department of Correction --

MR. FRIEDMAN: I object.

I think decision may be properly raised under the Jenkins case. He is an inmate. But it was my under-

standing testimony would come forth at this time only on two issues --

MR. HERMAN: I think this goes to overcrowding; two men in a cell.

THE COURT: That's a little questionable. It goes to the type of facilities -- whether they have one or two men in a cell -- They don't have closet or locker space.

I won't hear any more on that.

Q Where did you eat your meals in the Brooklyn House of Detention?

A In a cell, on the bunk or table, depending, and my cell partner, my brother -- He would take one day on the table, and then I would take a chance on the table, and the next day rotate; whatever was more convenient.

Q When upstate, where did you eat your meals?

A In a cafeteria.

Q Which do you prefer; eating in the cafeteria or your cell?

A The cafeteria.

Q Why?

A We had communications with the fellows, plus you feel more human. You feel more -- You develop a respect for your fellow man, and you don't have hostility like being

a pig fed in a cell through a hole in the wall.

Q How do they serve?

A Upstate they have a steamtable. You pick up a tray. If you liked it, you take it and you sit down with the people on the table, and talk and carry on a conversation like you're a human being. You feel like you are having respect. You have a respect for your fellow human being. You develop some respect for your fellow man and everybody else.

Q How did you feel eating your meals in the House of Detention?

A Like an animal. They bring you cold food. They are walking with three trays. They spit on your food. It's cold. It's not human. That's what I mean. It's not human.

They got to pass it through bars there. They don't even open your cell or nothing.

Q Where did they pass the food on the fourth floor?

A I was in upper A-13, and the food was passed under the door, on the floor. They guy gets through mopping the floor. The mices and cockroaches are running there.

Q Did they have a slit in the bars?

A No, not in upper A.

Q When upstate, Mr. Negron, how many men did you share a cell with?

A You only share it with one person -- yourself;

one man in a cell.

Q And in the Brooklyn House of Detention, you stated you had always two men in the cell?

A Yes.

Q Did you prefer to have a cellmate in the Brooklyn House, or did you prefer your own cell?

A I preferred to have my own cell -- Not now -- but at that time.

THE COURT: You don't want any cell now. I understand.

Q Tell the Court why?

A Well, at the time it was, you know -- Upstate, you have one man to your cell. You have your own personal things. You clean your own toilet bowl, sink and so forth. Down here, the Brooklyn House of Detention, here you got two guys in a cell. You get through, or you're going to wash your face, and here's a guy washing his socks, and he may jump to take a leak. You got to smell his. You can't take a shower. You rumble and everything else. It gets on your nerves.

You might put your toothbrush with your toothpaste and your bar of soap. He might take your socks and say somebody else stole them.

You got your personal letters. You don't want nobody to look at your personal letters.

You want to write a letter, and the guy over here is singing; he wants to change his socks, or whatever. You got this conflict, and you don't know the guy from the street, anyway.

Q You stated you were in a cell with your brother?

A Yes.

Q Did you find these conflicts existed with you and your brother living in the same cell?

A Yes. I love my brother. This is my brother. I have to get along with him for the rest of my life, no matter where I'm at. But I will tell you, it was hard. Several times we almost went to blows. I am fighting blows. But it's kind of hard. For the other guys that ain't brothers, it's really hard for them.

THE COURT: Was your brother acquitted, too?

THE WITNESS: No. He was found guilty on manslaughter.

Q Could you describe a routine day that you spent at the Brooklyn House of Detention?

A You get up about 5:30, 6:00 o'clock. They come around and give you breakfast; a cold breakfast; coffee, whatever they bring around.

Then, about something to 9:00, they lock up out. You go into the gallery, or go into the cold dayroom; whatever

it is.

Q What do you do if you come to the gallery?

A Nothing: just walk back and forth. It closes in. If you have claustrophobia -- well, everything gets short. You get frustrated. Every little thing bothers you. A guy tells you this or that. You start building conflicts. Something inside starts snapping. You're about to snap at anything -- even good officers who are human. They come to do eight hours.

You're there, not guilty until you are proven, and you are subject to going through this hostility without being proven guilty.

Q You said you went on the gallery, and also went to the dayroom sometime?

A Yes.

Q What did you do in the dayroom?

A If the TV is fixed, you watch it, if not, you just walk there and back to the cell until it's lock-in time.

At lock-in, you lay back in the bunk.

Q What time do you lock in?

A We locked-in at about 11:00 for chow. We lay there, wait for chow. We just wait.

Q So you're locked in from 11:00 to 1:00?

A Yes.

Visiting days are Monday to Thursday, but you're only allowed two visits, depending on your last letter of your name, and you expect your visit. You wait. You try to take a shower, or whatever it is.

Then, you lock-in at 3:00 o'clock.

Q Until when?

A Until 6:00, and then at 6:00 o'clock, the same routine, and then again you lock-in. You have got to go in the daryroom -- nothing. It's the same thing unless you're in a school program.

(continued on next page.)

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DIRECT EXAMINATION

BY MR. HERMAN (Cont.):

Q Did you participate in any programs?

A John Jay College Program.

Q What is that?

A That is a school program, nights, five days a week.

Q What hours did it meet at night?

A From 6 to 8:45, something like that.

Q Where was the class held?

A We went downstairs, inside the penitentiary, over the Supreme Court where there used to be a dormitory.

Q Now, aside from going to visits or to the classes were there any other times when you left your floor at the Brooklyn House of Detention?

A Yes. We had like commissary.

Q How many times a week?

A Only once a week.

Q Where did you go for that?

A We go upstairs. When it's cold we don't go up to the gym, what they call the gym; one side of the wall, one side of an empty building. If you want to you can call it a room. The guys play basketball and they have rusty weights for the guys to pick up. If that's cold you can't

make it there so you go to the commissary, back to the floor.

Q The only time you went to the gym was when you went to the commissary?

A No. Sometimes they call -- they take several guys off the floor. They might take 10, 15 guys up to the gym.

Q During the 16 months you were there, on the average, how many times a week did you go to the gym and have physical exercise?

A I don't know what you call physical exercise but like in 14 months the only time was when I was forced to go to the gym -- but I went to the commissary. It had to be a fair day. There was nothing up there to do; just to stay cold. I went up there to communicate with my friends. You can't cross from one side to the other. They don't allow it. You've got four sections. From the A side you can't go to the B side or C or D side. So, it might be 30 guys on your side of the gallery or more than that 40 or 50, depending on how many guys in a cell and that's all the communication you got with them guys.

Q Did you ever go to an outdoor recreation area at the Brooklyn House of Detention?

A No.

Dr. Levy -- this guy from Viet Nam -- he was

a dermatologist and he said I needed sunlight.

Q Why did you go to him?

A I caught pimples in the back from the blankets and having no sun and he told me I need --

MR. TOBIAS: Objection, your Honor.

THE COURT: Well, it is a kind of self-diagnosis. I will discount it for that but I will permit the answer.

Q You went to Dr. Levy because you had pimples?

A Yes.

Q What did he prescribe?

A He said I needed sunlight. It would clear up my skin and everything; my blemishes and everything --

MR. TOBIAS: Objection.

Dr. Levy's prescription is hearsay.

THE COURT: Yes.

MR. HERMAN: He is telling us what the doctor prescribed.

THE COURT: Sure. That's hearsay. I will have to disregard it. Obviously, a person at the House of Detention does not get sunlight except when he goes up on the roof.

THE WITNESS: Not me.

THE COURT: You had the right to. Didn't you

know that?

THE WITNESS: No one ever told me and I was there 16 months.

BY MR. HERMAN:

Q Did you hear about the roof?

A The roof I heard they had up there was not too long ago and I never went up there when I was there 16 months and I wanted to get up there for the sunlight I needed especially for the dandruff and so forth.

Q Can you describe a typical day when you were in an upstate penitentiary?

A We get up about 7 o'clock; go out to the mess hall; have breakfast; continue to the job and then from there after we get through working whichever job you have, you come back to the mess hall and there are all tours you can go. Some people go out to the yard depending on the job they have and they go back to work at 1 o'clock, come back at 3 o'clock. We come back to the yard. In the yard you do sports, whichever sports you like to do.

Up in Quentin we have bobsledding, skiing, ice skating and so forth; football, basketball, handball, weight lifting and bocci plus you cook out.

MR. HERMAN: Nothing further at this time your Honor.

5 Negron

THE COURT: Any cross-examination?

MR. TOBIAS: Yes, your Honor.

CROSS-EXAMINATION

BY MR. TOBIAS:

Q Mr. Negron, before I go into the questions I want to ask you specifically, I'd like to know the dates you were in the institution; specifically and exactly?

A You mean from the day I w[illegible]sted?

Q The dates you were in the [illegible]lyn House of Detention over the 16 month period?

A I was there from November 21st --

Q What year; '72?

A 1972 to now, in 1974.

Q I take it to mid-January 1974 --

THE COURT: How long have you been out?

THE WITNESS: I just been out a week. I got out a week.

Q Mr. Negron, who --

THE COURT: That's 14 months instead of 16 months. It's a long time to be confined.

THE WITNESS: You lose track.

Q Who delivers the food to the cells of the inmates?

A The inmates.

Q Now, on your direct examination you said some people spit in the food. Would you describe that? Were you referring to a correction officer or inmates themselves?

A When you talk you usually spit. You just spit on your paper without realizing it. So, when you speak with someone else you spit on their food.

Q If you're in a cafeteria with other inmates I presume you converse about the events of the day?

A Yes.

Q Would it not be possible for you to spit while talking across --

A That's my spit not your spit.

Q I think you probably get the point.

A No, I don't get the point.

Q You testified at the institution tempers ran short and there was a lot of tension?

A Well, I didn't get --

Q You testified on direct examination that at the institution tempers between the inmates ran short and there was some tension?

A There is tension.

Q Is this not true of other institutions as well? Was there any tension at the upstate institution where you served?

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A The tension up there is a different type of tension.

Q Was there tension up there? Please answer.

THE COURT: He says there is but it is different. You have to find out the difference.

A Over here, I don't know what ti[illegible] I'm going to get. Up there I know when I am getting out.

Q So, it's fair to assume then that the tension is not primarily directed at the facility --

A It is specifically --

Q -- or is the tension directed to the fact you don't know what is eventually going to happen to your case? Isn't that a big part of it?

A The whole thing. The way we are treated.

Q Didn't you just say that the basic tensions --

A If you let me finish --

THE COURT: You are going beyond answering the question. This is cross-examination. Mr. Tobias can put questions the way he wants.

Q Did you not say that a good portion of the tension was directed to the fact you didn't know the final disposition of your case?

A Well --

Q Please; yes or no?

A Yes.

Q I understand you participated in the John Jay Community College Program?

A Yes.

Q Mr. Negron, are you a high school graduate?

A No.

Q When you were on the outside, so to speak, before you were incarcerated, did you get involved in any college programs?

A In school programs, yes.

Q Any college programs?

A You need a high school diploma.

Q What type of educational programs were you involved in before you got involved --

A In programs to teach you to read and write English and teach the community how to read and write English. That's what John Jay -- to read and write; to better ourselves for high school diplomas.

(Continued on next page.)

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CROSS-EXAMINATION

BY MR. TOBIAS (continued):

Q Do you feel your participation in the John Jay program which you experienced while you were in the detention facilities will be of asset to you?

A They helped me a whole lot.

Q You would characterize it as valuable?

A Oh, yes.

I wish they would accept much more of the inmates. They accept only about 30.

Q How did you find out about the John Jay program?

A I was being interested in different programs, all --

Q Yes -

A (continuing) -- and there was an article put on the blackboard up there and I asked for an interview --

Q Yes --

A (continuing) -- and they told me, like, if they accepted me after I took the tests and everything, they could only accept about 30 guys; was I willing to wait or what? I said, "I'll accept it." I figured I would be there quite awhile.

Q So, I take it then that you were initially

advised of the program because there was a bulletin board -

A Just a piece of paper somebody taped up to the wall.

Q Are you aware of the other educational programs in the institution?

A Yes.

When we first started, we started with John McCrinsky. He opened up the preparation for the high school equivalency. From that, they gave it to an officer from the corrections department who I believe is running it but the guys don't trust him and don't go.

Q Are you aware of the other programs; dramatics and arts and crafts?

A Yes, I know about the dramatics and arts and crafts.

Q How did you find out?

A Through other inmates.

Q How about the corrections officers? Did they ever inform you about the programs?

A No.

Q Were they available to inform you if you asked?

A I don't know. Every time you ask a correction officer about something, he tells you, "I don't know."

Q Now, you said that you had a lack of physical exercise while at the facility?

A Yes.

Q Now, did anybody stop you from doing pushups, situps or such activities?

A No.

Q Could you have don pushups if you were so inclined?

A If I have to do pushups on the outside corridor I have to clean the corridor.

Q I dont understand that. Please explain that to me.

A The place is filthy. I'm not going to put my face down there.

Q Did anybody else do pushups while you were there?

A Yes. They had to clean the whole section. You can't do it in your cell; it's too small.

Q Did other inmates do pushups?

A Yes.

Q You testified that the gym was cold when you were up there?

A Yes.

Q Every week you were there, was the gym too cold?

A Not in the summer but in the winter it's cold.

Q So, are you qualifying your earlier testimony to say it was cold just during the winter months?

A Yes.

Q What months can we limit this to? Is it cold in just December, January and February --

A From when it gets cold -- from November.

Q Let's -- like maybe fall, winter and early spring?

A From November to the next spring, and so forth.

Q Is it also your testimony that you did not know about the outdoor recreational facilities available in the institution?

A I didn't know nothing about the roof thing.

Q You never knew of any inmate participation in any outdoor gym activity while you were there?

A None of the inmates said they were going on the roof but to the gym.

Q And when they said, "to the gym," you didn't know they were going to a gym facility on the roof?

A When they told me, they told me they were on the roof when they said the gym.

Q Is that outdoors?

A No. That's the gym or roof or whatever you

call it.

Q Now, did any of these inmates tell you there was an outdoor facility someplace in the institution?

A No.

Q You knew of no inmate who used an outdoor facility?

A No.

Q Over a 14- or 15-month period that you were there?

A I don't know.

Q How often did you see movies while at the institution?

A Well, you see movies -- like, a movie day was on a Wednesday.

Q You see it once a week?

A No. If there wasn't a holiday involved or anything special with the penitentiary, then you made the movies or else you didn't make the movies.

Q So, in other words, it was shown sporadically; some weeks they missed it?

A They missed a whole lot of weeks.

Q How oftendid you have visitors come to see you?

A My wife come to visit me twice a week.

Q How often did you go to court?

A Court?

Q Yes.

A I went to Court seven times, up to --

Q While in the institution?

A While I was in the institution?

Q On writs and applications.

A You can check it out. It's in the court papers and everything.

Q I take it you did leave the institution five days a week for the John Jay program?

A Leave the institution? If you leave the institution, you'd have everybody out of there.

Q Where was the program conducted?

A It was conducted downstairs.

Q You left the floor, then?

A This is after awhile. We used to use the dayroom but then after awhile they said they didn't trust the civilians, so they sent us downstairs.

THE COURT: I think that's a little hearsay.

THE WITNESS: Downstairs, the dormitory.

Q How long did this program run; how many months were you involved in it?

A What months? It runs for six, seven weeks; something like that.

MR. TOBIAS: Nothing further.

Our next witness is Dean McKay and he will be here within the next 10 or 15 minutes.

THE COURT: You have nobody else?

MR. HERMAN: I think all these witnesses would probably take long.

THE COURT: Well, let's start one of them.

MR. MUSHLIN: Ronald Smith.

R O N A L D S M I T H, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. MUSHLIN:

Q How old are you, Mr. Smith?

A Twenty-two.

Q What is your permanent address?

A My home address is 286 Eastern Parkway.

Q Mr. Smith, have you ever been convicted of a crime?

A Yes.

Q What crime?

A Robbery.

Q When?

A In 1968 -- 1969. Yes, 1969.

Q What was the disposition of that?

A Three years in the City reformatory.

Q Where did you serve that sentence?

A Rikers' Island.

Q Anywhere else?

A Upstate.

Q Where?

A Clinton.

Q For how many months?

A Three months.

Q Now, Mr. Smith, are you presently being detained at the Queens House of Detention?

A Yes.

Q On what charge?

A Robbery one.

Q When were you arrested?

A I was arrested March 29, 1971.

Q And have you always been confined at the Queens house or any other institution?

A I was confined at Atlantic Avenue.

Q The Brooklyn House of Detention?

A Yes.

Q For how long?

A 31 months.

Q And how long have you been confined to the

Brooklyn House of Detention?

A Three months.

Q Now, during that period of time have you had a cell partner?

A Yes.

Q How many cell partners have you had?

A I can't even count them no more.

Q Approximately?

A About 20, 22.

Q Do you have a cell partner now?

A Yes.

Q How long have you had this particular individual?

A Ever since I came to New Queens.

Q Is your cell partner leaving the institution?

A YEs.

Q Why?

A He copped out to seven years. He got sentenced.

Q Now, Mr. Smith, you will be getting a new cell partner?

A Yes.

Q Can you tell the Court what sort of adjustment you will go through when your new cell partner comes?

MR. FREEDMAN: Objection.

THE COURT: I will allow it.

A It is like starting all over again.

Q Explain what you mean?

A You get one cellie. Already you have been living together like you're almost married and like, all of a sudden, a new man comes in and you have got -- you're skeptical. You don't know the type of person he is. If he is a maniac, or what. You got to sleep with your eyes open and adjust your whole self again.

(continued on following page)

DIRECT EXAMINATION

BY MR. MUSHLIN: (continuing)

Q When you say "sleep with your eyes open," explain to the Court what you mean?

A You've got different types of people coming off the street; drug addicts, people who walk in their sleep, do body harm to you.

Q Have you ever had a cell partner who acted bizarrely?

A Yes.

Q Explain when and under what circumstances.

A I was on Atlantic Avenue. I had a cell partner who came from Matawan, and they put him in with me. He is talking about, he was going to hang himself. I can't tell the man not to, or what. I mean, I told him, "If you're going to hang yourself, wait till I leave out of the cell. Then you can do what you want to."

If he's in that cell and hangs himself, I got another charge. I can't get over this robbery -- talk about a homicide.

Q Was there any behavior that this particular cell partner exhibited?

A He would walk around with his clothes off, in the nude all the time. Then he plays in the toilet bowl. I

told the officer about him.

Q What did he say to you?

A The officer said, "Oh, you're a psychologist now. You know if the man is sick or not. Stay in the cell."

So, I am ready to pack up. I am ready to go to the bing.

Q What's that?

A Jail, inside the jail.

Q You mean, put in a type of segregation?

A Yes, I am ready for that, now. I don't want to sleep with this man in here. I don't know if he will hurt me or what. I packed my clothes up, ready to leave, so they got that Warden -- first he got the Captain, but I said, "I don't want to talk to the Captain. Get the Deputy Warden."

They got the Deputy Warden. I said, "I won't stay here with this man."

The Captain said, "Look here, you can't say this man is insane because he walks around in the nude all the time."

So, I said, "Look here. Just put me in the bing."

They sent me to segregation.

Q For how long were you confined in the same cell with this particular individual?

A I stayed there with him about two days.

Q Now, on a typical day at the Queens House of

Detention, tell us at what time you are awakened?

A You are awake at 5:30.

Q How?

A The spoon man, he comes with the spoons, waking you up; time to eat.

Q Is the spoon man an inmate?

A Yes.

Q What do you do after you're awakened by the spoon man?

A I jump up, wash my face. He waits for me, my cell partner has to wait for me. It's too crowded for us to do it together.

Q It's too crowded?

A Yes.

After he wash his face and all that, the food comes.

I'm in my bed. He gives me my plate on the bed, and he sits at the table, and we start eating.

Q So, you eat, sitting on your bed?

A Right.

Q What happens next?

A Then, after we get finished eating, I pass my tray. He puts it outside the bars.

Then he jumps back in his bed, and any activity

we are going to do, you have got to do it then. If I stand up and do exercise, it has to be then.

Q Now, when is the cell opened?

A The cell is opened at 9:00 o'clock.

Q What do you do in between the period after breakfast, and before the cell is open?

A Don't do nothing; just rap.

Q Do you go back to bed?

A You can't go to sleep. You're woke up already.

Q When the cell opens, do all the other cells on your floor open at the same time?

A Right.

Q Tell us what happens then?

A Everybody's glad to get out. Everybody runs to the dayroom or downstairs.

Q What do you do?

A Me?

Q Yes.

A I run downstairs.

Q When you say "downstairs," tell us what you mean?

A There's two galleries --

Q What location are you at, by the way?

A I am upper 5-C-12.

So, I run downstairs, hand out downstairs to get

away from the cells. Really, try to get off the floor.

Q Do you go to the dayroom?

A Yes.

Q What happens next?

A We hang around. Everybody will be rapping to each other. Nothing really going on in the morning.

There are some people up in the dayroom playing handball. There's no TV in the morning; nothing constructive. Everybody rapping and playing.

Q Does there come a time when you're locked back in your cell?

A Yes.

Q What time is that?

A 11:00 o'clock.

Q Going back just a minute, before the time you are locked in your cell, do you prepare yourself for that?

A You don't prepare yourself for it. You got to lock-in.

Q How does it fell when you lock-in at 11:00 o'clock in the morning?

A You don't feel, really, nothing.

At 11:00 o'clock, you just lock-in, and everybody tries to schome to get out; con the officers to let them out.

Q What happens then?

A You can't get out; you can't get out. You have to stay in there.

Q Is your lunch served then, in the cell?

A Yes.

Q At what time?

A The lunch is served exactly anywhere from 11:30 to 11:35.

Q Between 11:00 and 11:30, what do you do?

A Excuse me?

Q Between 11:00 o'clock when you're locked-in the cell, until 11:30, when you eat lunch, what do you do during that time?

A You rap to each other.

Q Do you go to bed?

A No.

Q Where do you eat your lunch?

A Eat my lunch the same place. I ate my breakfast on my bed.

Q Where do you put your tray?

A If it's a hot meal, I have to use my pillow on my knees so it don't burn me, and I eat on my pillow. But, when I eat on my pillow, a lot of food -- because you're off-balance as it is -- then food comes on my pillow. I have

asthma. In the night, it's hard for me to breathe. I can't get no attention like I'm supposed to.

So, my cellee, by him being there, first he has the prerogative to have the table first, although I have more time.

Q He occupied the cell when you were introduced to it?

A Yes.

Q So he had the right to the desk?

A To the whole cell. I just had the right to my bunk.

Q After lunch, what do you do?

A I sit down on my bed, and he may sit at the table, and we rap a little more. Nothing else is happening there. But like what's really going on, we rap all day long, so that expands from 11:00 to 1:00.

Q Are you able to talk, converse with other members of the cellblock?

A Yes, if you beat on the walls. We do that constantly.

Q You do?

A Right.

Q Explain how you do that?

A With your shoe, your hand, any way you can get

attention.

Q Do you shout through the walls?

A Yes.

Q Now, are you locked out in the afternoon?

A You're locked out at 1:00 o'clock.

Q How does that feel?

A It feels good coming out at 1:00 o'clock.

Q What do you do during the afternoon?

A Do the same thing I did in the morning, but now I got the opportunity to go upstairs.

Q How do you do that?

A I tell the officer I'm sick. I go to the infirmary, but not at this time of the stage, I want to get off the floor as fast as possible. So, I got upstairs to see -- even though I'm not sick, I stay up there.

Q Does there come a time when you're locked back in the afternoon?

A Right.

Q When does that happen?

A That happens at 3:15.

THE COURT: We will take our mid-afternoon recess here.

I seen Dean McKay is here. We will interrupt Mr. Smith, and then resume.

MR.

8a Smith - direct 120Aa

MR. MUSHLIN: Thank you.

5 fls (Recess taken.)

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(After recess)

THE COURT: All right, Mr. McKay .

MR. GARRITY: The plaintiffs call Dean Robert B. McKay.

R O B E R T B. M C K A Y, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. GARRITY:

Q Mr. McKay, could you state for the record your present occupation,your position?

A Well, I am Dean of the Law School, New York University. In addition, I am appointed Chairman of the Board of Corrections, City of New York.

Q Did you previously serve as Chairman of the Attica Commission ?

A Yes.

Q During what period did you serve as Chairman of the Commission?

A I was Chairman of the New York State Special Commission on Attica from the end of September, '71, through September 13, 1972, when we issued our final report.

MR. GARRITY: The plaintiffs would offer Dean McKay as an expert on corrections in New York State and

New York City.

THE COURT: Well, I will let the defendants examine him if they want to find out more about the extent of his expertise.

MR. FREEDMAN: Yes.

THE COURT: You may proceed, Mr. Freedman.

VOIR DIRE EXAMINATION

BY MR. FREEDMAN:

Q Have you had any formal educational training in the field of corrections?

A Not, formal, university-based. My training is in the prisons.

Q Educationally?

A No.

Q Have you ever been a correctional officer, warden, or held any such position in any institution?

A No, I have not.

Q Let me ask you this: Is your experience in this area limited to the promulgation of the official report of this New York State Special Commission on Attica?

A No, my experience in that connection was in assembling the staff, conducting interviews, conducting hearings and the determination, with commission members and staff members, of our final report.

Ever since April, 1973, I have been involved with the Board of Corrections, City of New York; visitation of prisoners, and have been in constant contact with the problems at the New York City prisons case.

Q In your duties as Dean -- have you taught any law school courses?

A Yes. I begin classes on Thursday.

Q Have you ever taught any course on penology and corrections?

A No.

MR. FREEDMAN: No further questions, but the City objects at this time.

THE COURT: Well, I think the witness can testify, not so much as a theoretician on penology but as an observer who saw more than one institution.

MR. FREEDMAN: So as to observations, he can testify.

MR. GARRITY: I would offer him as an expert based on his experience with the Attica Commission.

I'd like him to be able to offer his opinion.

THE COURT: I won't give you a general ruling. I will listen to specific questions.

DIRECT EXAMINATION

BY MR. GARRITY (continuing):

Q In your capacity as Chairman of the Special

Commission on Attica, did you and your staff study the conditions that prevailed prior to the uprising?

A Yes, we considered that important to a determination of the uprising.

Q Describe the scope of the studies made under your supervision?

A Yes.

The Commission consisted of nine individuals and the facility had, at various times, sixty to almost 100 individuals involved at one time or another.

We determined very early in the investigation that it was important and, we thought, necessary to interview as far as possible every person having any connection with Attica at the time of the uprising, so we made an effort to interview every inmate,corrections officer, State trooper, sheriff's deputies, national guardsmen and the officials of that institution and the State officials, including the governor, having part in the determination of the event.

Q Did you also take testimony at hearings?

A We had public hearings.

After the bulk of the interviews were conducted, we selected inmates, corrections officers and public officials who could tell the story to the public, as we

hoped.

We had three days of televised hearings in Rochester on the public TV network there and ten days in New York on the public TV network.

Q Did you take part in either interviewing or hearing the testimony of corrections officers who served at Attica?

A I participated in the initial interviews at Attica to get the feel of it and see if the interview forms worked adequately.

I participated with the other members of the Commission and a great many of the private hearings in New York or Rochester. I presided at the hearings held for public television.

Q You heard inmates, Attica guards, public officials, state troopers, I take it?

A Yes.

Q Did you determine now much of each 24-hour day inmates at Attica spent in their cells during the period prior to the riot?

A It varied from individual to individual but nearly all of them had at least 16 hours in their cells and some, of course, including a few, were locked in 24 hours a day, but the average was probably 16 to 18 hours a day of

lock-in time.

Q Was this amount of confinement a factor, did you find, that precipitated the uprising?

A It is hard to designate a single cause, but the fact of the lock-in time, the idleness in the cell, the unproductive time outside the cells, contributed to tension which we feel was a major contributing factor.

Q Why so much lock-in time?

A The institution was nearly at full capacity during that time.

The total population in September, 1971, was more than 2200; 2,243 is the number I recall. That meant the numberof corrections officers made available to service that population was inadequate toallow the prisoners much free time in the yard, in recreation and thus, all the facilities were overtaxed, meaning the only practical thing was to confine most of the inmates most of the time.

MR. FREEDMAN: The answer is obviously based on hearsay and conversation with others.

THE COURT: Well, it is sort of hearsay that might go into a published report and some of it has been in a published report, and I will receive it, recognizing the limitations that you have mentioned.

Q In 1971 at Attica, did the inmates have outdoor recreation and if so, how much?

A There was some period, of course, the winter--

THE COURT: The uprising took place in September. I am not concerned, really, about the winter.

THE WITNESS: (continuing) -- at the time, there was some outdoor recreation. For most of the inmates, it was ordinarily an hour to two hours a day.

BY MR. GARRITY:

Q And that was not sufficient outdoor recreation to cure the tension caused?

MR. FREEDMAN: I object, your Honor. It is a very leading question.

THE COURT: Sustained.

BY MR. GARRITY:

Q Have you visited Attica during the past year?

A Yes, I went back to Attica in August, 1973, with one of the other members of the Commission and our staff to see what changes occurred since that time.

We found that the prison population was down to a little over 1200; the number of corrections officers had actually increased slightly, meaning the ratio was much more favorable. That meant that some areas entirely occupied by inmates in the past was available for recreation

programs and other kinds of activity. That meant also that the corrections officers felt they could safely allow more free time for all inmates and by August of 1973, there was outdoor recreation available every afternoon from 5:30 to 9:30 for most of the inmates. There had been no outdoor recreation, none of any kind during those hours in the past.

When the weather was inclement, they were allowed to use the mess hall now sufficient to have the entire population that would want that kind of recreation.

At that time it was also possible to house the entire population in their auditorium so there was a relaxed, a relaxation of the program demands and opportunities.

Q Were you able to get an impression from visiting the institution as to the effect this kind of relaxation had had on the general atmosphere?

A It was our impression, and it is hard to be more specific, that the atmosphere was much more relaxed than in 1971, and in addition, that seemed to be the testimony of the officers, officials and the inmates themselves.

At that time the new gym was being built, if not finished, it will be now very soon, which will make a substantial difference --

MR. FREEDMAN: I object to that answer.

I know the dean is not qualified as an expert in psychology or psychiatry. The tensions and also many of the things he said were based on statements of others.

THE COURT: I think the statement about atmosphere is a little subjective.

MR. GARRITY: We offer it as a subjective impression.

THE COURT: As a subjective impression, I think it is not likely to be binding on the Court.

Go ahead with the next question.

MR. GARRITY: I think it is important that we be permitted to present opinion testimony and I would like to again request that you accept the dean as an expert, at least as to the cause of the uprising at Attica.

THE COURT: But on his impressions on a couple of days' visits to an institution, I think it is a little difficult to judge what the general feeling is.

MR. GARRITY: I am asking, was there a contrast between what appeared to be the case during his visit then and what testimony had indicated to

the Commission was in the case, prior to the 1971 uprising?

MR. FREEDMAN: The speculative nature of the question -- the witness never said he was at Attica before the uprising.

THE COURT: He heard a lot about it before, so I think you have a background, there.

(continued on following page)

DIRECT EXAMINATION

BY MR. GERITY: (continuing)

Q Would you tell me how many inmates occupied a cell, or each cell, at Attica?

A Yes, one.

THE COURT: I think the Court heard testimony that the cells there in fact slightly larger; that the cells at upstate institutions in general are slightly larger than the Brooklyn and Queens Houses of Detention--

I don't know if I have figures on the size of the cells.

MR. GERITY: You have testimony by Ronald Foy, for example.

THE COURT: Yes, all right.

Q How large are the cells at Attica?

A Six feet wide, nine feet long, seven feet high.

Q Now, in the course of your serving as Chairman of the New York Board of Corrections, have you become familiar with the present conditions and situations in the jails of New York City?

A I have some familiarity with some of the conditions.

Q Have you visited most or any of the correctional institutions?

A All those at Rikers. I have been in the Tombs many times. I have been to the Brooklyn and the Bronx Houses of Detention. I have not been to Queens.

Q And you are familiar with the fact that the present practice is to keep inmates in their cells fifteen and a half to sixteen hours a day?

A That is my understanding. That varies from institution to institution, as you know.

Q As a general fact -- The Court heard testimony -- Well, the total of the time spent at lock-in is fifteen and a half hours a day.

A At the two institutions you are talking about --

MR. FRIEDMAN: It appears counsel is testifying.

THE COURT: He is trying to summarize for the dean some of the testimony that came before. If it is not accurate, cover it on cross-examination or by specific objection.

What is your question now?

Q The question was based on what you learned of the factors which precipitated the uprising in Attica, and would such amount of confinement, is that advisable in dealing with detainees?

A I consider it especially unfortunate to have such a substantial amount of lock-up time, when their sentenced brothers and sisters in the City and State are not subjected

to that lock-up time.

As others have said, it is a world upside down; that the detainees with the presumption of innocence, not tried, should be subjected to that, and I consider it a substantial indignity.

Q Another factor that has been shown is the fact here that inmates in the City are confined two to a cell. Do you think this is an advisable practice?

A It is an inadvisable practice. The City did it not because it is desirable, but they considered the necessity of the circumstances. I think there is uniform conclusion that it is an undesirable fact.

I have noted with interest, for example, what Chief Justice Warren Burger has said about that, and if you think it is appropriate, I will put it on the record.

MR. FRIEDMAN: I object to that.

THE COURT: I think that is the realm of briefing, I don't know if we need the Dean's comments on that.

MR. GERITY: I think a brief would probably be the most appropriate place.

THE COURT: I think I heard Chief Justice Burger's speech on prison reform two or three years ago at the ABA.

Q Dean McKay, one reason I thought it would be valuable to have you testify as Chief of the Board of Corrections, is that you have an acute and general overview of the

situations --

MR. FRIEDMAN: Objection.

MR. GERITY: I will drop it. It is introductory. I will drop it.

THE COURT: Yes, drop it.

Q What is the solution to the situation of overcrowding? Is there any solution that occurs to you on the basis of your experience in the New York City Correction Department?

MR. FRIEDMAN: I object at this time.

The witness has not been qualified as an expert. He has indicated he has no training in the field of penology, formal training, and that he never taught a course in that field. I cannot see how he is qualified to give an opinion as to how overcrowding --

THE COURT: I don't think a penologist can say what the solution is.

If I decide there is a Constitutional violation, I will have to consider if there is a solution, and I think from his practical experience the witness may have some ideas on it, and I will listen to them.

Q To give a little background, are you familiar with plans and projects of the Department of Corrections?

As Chairman of the Board of Corrections, have you become familar with any of the plans of the Department of Corrections, or the programs?

A Yes.

One of the obligations of the Board of Corrections under City Charter is to review all the plans for budget, construction, and the guiding principles on which the Prison Authority is based.

Q If it were granted that overcrowding and excessive confinement in cells were undesirable and should be done away with, is there anything that occurs to you as a possible remedy for it?

A Several things which may not be in the direct power of the Court.

One of the most important would be to reduce or eliminate money bail.

Many of the detainees could not raise from a hundred to several thousand dollars bail, whereas others, equally secure in terms of community danger, are on the outside.

A second, would be to assure the guarantee of a speedy trial. It is well known that the average period of time awaiting trial in New York City jails is longer than desirable.

Another thing, is to move inmates from Brooklyn and Queens to some of the other institutions in which there is less than so-called 100 percent occupancy, particularly on Rikers Island.

I understand there are disadvantages in that, but

certainly it would be advantageous for those confined in excess.

Q Have you access to figures on census at Rikers Island?

A Yes.

Q Could you tell us what the present or latest census figures are?

A I have the official inmate population, January 17, 1974 --

Q I would just ask you then, according to those figures, what is the capacity of the New York City House of Detention for Men on Rikers Island?

A The capacity is 1879. The present population that is, January 17, 1974, was 11,002; 56 percent capacity.

Q Is there anything other than transfers to Rikers Island?

A I take it you ask about two things -- or let me find out -- More than one person to a cell?

The only way to cure the problem of overcrowding in that sense in any institution is to reduce inmate population.

As I say, it can be done by reduction in bail, by the speed trial, or by actually moving some of the inmates out, or simply not accepting any more until the population is down.

On the question of excessive lock-in time, in my judgement, it would be possible to ameliorate that difficulty

by making more flexible the hours of release time. That might, in some institutions, require renovation so there are more programs available so they cuuld have more time outside the confined area they are in now. This has been done in other institutions in the City and elsewhere.

MR. GERITY: Thank you, Dean.

(continued on next page.)

CROSS EXAMINATION

BY MR. FRIEDMAN:

Q If I am not incorrect, you just testified that at certain institutions greater lock-out time would be available if reconstructions were undertaken and more program areas built in these institutions.

Are you familiar with the program areas available now at the Queens House of Detention for Men?

A I am not.

Q As you said, you never visited the Brooklyn House of Detention?

A Yes, I have. I have not been to Queens.

Q Are you familiar with the program areas at the Brooklyn House of Detention?

A I have at least visited them.

Q Could you tell us what they are?

A I cannot very precisely. I may confuse one institution with another, but it is my recollection at Brooklyn there is a gym at the top floor -- Am I correct?

Q I suffer from the same problem as you --

THE COURT: There is a so-called gym.

A (continuing, There is a library, and that's about the size of it, as I recall.

Q Since you say you cannot be precise about the

Brooklyn House of Detention, and you have never visited the Queens House of Detention, am I right that when you said structural changes would help certain institutions, you did not refer to the Brooklyn or Queens --

A No, sir. I referred to possibly taking out cells to make more program areas, as is planned for the Manhattan House of Detention.

Q Yes, but you didn't mean that was the specific solution to the lock-out, or what the plaintiffs characterize as the minimal lock-out time at Brooklyn, or do you suggest that as a specific cure for the Brooklyn House of Detention?

A There are several ways to deal with overcrowding and excessive lock-in time.

In part, it would be by reducing the population, by not accepting more inmates or removing those there, or by structural renovations of the institution itself.

Q But I am asking specifically about the Brooklyn House of Detention, and whether or not you are saying or recommending that structural changes should be made at the Brooklyn House of Detention to add more program areas, and thereby alleviate the lack of lock-out time?

A I would welcome that.

Q Are you aware that there is already -- Excuse me -- from your testimony, you appeared not to have been aware

of the fact that there is an arts and crafts room in the basement of the Brooklyn House of Detention. There is also a chapel.

Assuming there is also a chapel at the Brooklyn House of Detention, used for jazz concerts --

A And religious sermons and movies. I have seen that.

Q Although you would welcome structural changes, and I understand that, would you specifically recommend that structural changes at the Brooklyn House of Detention would be a solution to the lock-in problem as envisioned by the plaintiffs?

A That is one possibility.

Let me make sure I explained what I am trying to say: If the population was reduced so there was no more than one to a cell, and if it were reduced sufficiently so some of the cells could be taken out and the area converted to library, gym or auditorium space, the problem would be alleviated.

Q You could have more lock-out time just by having more areas for that lock-out time?

A Yes.

Q Wouldn't it be necessary to have sufficient personnel and correction officers available?

A That works automatically.

Assuming that a certain level of security, no different from the present, is necessary, if the inmate population is reduced by a third or a half, and the officers remain constant, automatically the ratio goes up dramatically. That is what I was trying to explain at Attica.

Q Are you aware now that during lock-out hours at the Brooklyn House of Detention, there are two officers on each floor?

A The lock-out time, as I understand it, is within a confined area, still a restricted area. I do not really contemplate that as lock-out time. It is stil lock-in.

Q In the parlance of this case, it is considered lock-out time. I won't pursue that further.

How many times have you visited the Brooklyn House of Detention for Men?

A Once.

Q When was that?

A In the last spring or early summer. I spent most of the day there.

Q How much time did you spend there?

A Three or four hours, at least.

Q In the beginning of Chapter Two of the Official Report of the New York State Special Commission on Attica -- We both have a copy -- on page 21 it states:

"Examined separately, many of the inadequacies and frustrations of inmate life may appear insignificant. But their cumulative impact created a dehumanizing environment."

In reference to that lock-out time, as mentioned, would this be considered one of the many inadequacies and frustrations that may be insignificant in itself, but in a cumulative sense be deemed to create a dehumanizing environment, or could that one factor, isolated by itself, create such environment?

A I wouldn't say excessive lock-in time is insignificant in itself, and I believe that would apply in the New York City prisons at the present time.

Q Isn't it true that by itself, in accordance with the Attica Commission report, it would not create a dehumanizing environment, as said to be created at Attica?

A It is one of the factors, and added on to all the other problems, because the staff was small in relation to the population, it was necessary to have very limited lock-out time. That also meant the program was very insignificant; that is, small in amounts. It meant that the vocational training was inadequate. There were two, three, four individuals for each single job.

The visiting hours were undesirably restricted.

The sick call was inadequate.

The recreation time outdoors and indoors was limited.

The library facilities were limited.

All these things cumulatively make for inhumaneness in an institution, and are attributable, I think, in large measure, to the overcrowding and, I think, the excessive lock-in time.

Q So, it is your conclusion that minimal lock-out time is because of overcrowding?

A The excessive cell-time is a factor reflective of the fact that there was insufficient staff, insufficient program area to accommodate the heavy burden of inmate population.

Q That was at Attica?

A Yes.

Q In light of the quote which I just read, would it also be fair to state that examined separately, many of the positive aspects of detention facilities may appear insignificant, but there cumulative atmosphere for the inmates there incarcerated, is beneficial?

A That is true.

THE COURT: You can add up good factors as well as bad.

MR. FRIEDMAN: Yes.

THE WITNESS: I fully agree.

Q As I understood it, the first bad condition at Attica mentioned in the book was the fact that prisons today are unvisitable, located in an area far from the homes of the inmates.

Assume the institutions were near the homes of the inmate and would enable frequent visits as opposed to the type of visits available at Attica, which I think the Commission called a "losery," because of the expense and time for a person from New York to go to Attica. Would that be one such positive aspect that may help to create a more humane atmosphere?

A It is desirable to have the institutions as close to the place where the inmate comes from as possible.

Q Now, in light of that fact, and that answer, I'd like to ask the following question:

You said, "as near as possible." Did that include a difference of twenty or thirty miles, or an hour in traveling time?

If I could have one institution an hour closer to an inmate's house, is that more desirable than having it an hour away?

A Yes.

Q So, if an inmate lived near the Brooklyn House of

Detention, in that area, it is more desirable to have him incarcerated in Brooklyn than Rikers Island?

A If the institutions were otherwise comfortable, it is clearly more desirable for him to be stationed in Brooklyn rather than Rikers Island.

Q In the Attica report, it was stated that Attica had no meaningful program of education.

Assume the Brooklyn and Queens Houses of Detention had meaningful programs of education. Would they be factors which in their cumulative factors would create a better environment?

A Assuming that, it is desirable. There is a whole wealth of factors which we should work to improve as best we can.

Q You said in the Commission report, or it is stated in the report that Attica had no established regulations or procedures to assure inmates access to the press.

Assuming the Queens House of Detention and the Brooklyn House of Detention has established procedures to assure inmates access to the press, would this be positive within its cumulative impact, and create a more humane environment?

A Of course it is more desirable.

Q You stated, or the Attica Report states, that

community groups and outside professions were not encouraged to participate in the life of the correctional facility.

Assuming at Brooklyn and Queens, community groups and outside professions are allowed and encouraged to participate in the life of the correctional institution, would that be, within its cumulative impact, a help in creating a more humanized atmosphere?

A Yes.

Q The Report stated that incoming and outgoing mail at Attica was edited.

Assume it is not at Queens and Brooklyn, it is merely opened and checked for contraband and outgoing mail can be mailed in sealed envelopes, would this, within its cumulative impact, help create a better environment for the inmates?

A I commend the result.

R18 fls

(continued on next page.)

IG:GA
R18

CROSS EXAMINATION

BY MR. FRIEDMAN: (continuing)

Q It is stated in the Report that at Attica visits were conducted through a screen, and followed by a thorough strip-search of every orifice of the inmate's body.

Assuming at Queens and Brooklyn, visits are not followed by a strip-search, would this be one factor, within its cumulative impact, which would help to create a more humane environment for the inmates?

A I have trouble with your assumption. I don't know about the search. It is probably not necessary in view of the demeaning circumstances of the visitation rights.

Q Assume there is no strip-search, would that be a positive factor?

A Yes, if you are willing to live with the rest of the visitation arrangement.

Q When there was visiting through a screen, did you feel that necessarily should be followed by a strip-search?

A No.

Q A report stated that at Attica clothing the inmates wore was old, ill-fitting and inadequate.

Assuming that the Queens and Brooklyn Houses of Detention the inmates are allowed to wear their street clothing and change regularly, and receive from visitors new and clean

clothing, is that a factor, within its cumulative impact which would create a more humane environment?

A I think it is a good result.

MR. GERITY: I wonder, do we have to go through every positive and negative feature?

THE COURT: I will let him show as much as he thinks is necessary.

You are trying for an injunction. He has a right to a defense.

Q The Report stated that at Attica the inmates were not protected from homosexual advances.

Assuming that the administration in Brooklyn and Queens is doing all it can to protect the inmates from unwanted homosexual advances, would that be a condition wherein a cumulative impact would help create a more humane atmosphere at those institutions?

A That is desirable.

Q In the Report of the Attica Commission, it was stated that the keepers were white and the inmates black and Spanish-speaking; no black officers, and one Puerto Rican officer.

Assuming that at the Brooklyn and Queens House of Detention there are a significant amount of black and Spanish-speaking personnel and correction officers, would that

be an asset which in its cumulative impact would help in creating a more humane environment?

A Yes.

Q The Report stated that at Attica there was no meaningful educational program for the inmates, there was no English, as a second language, being taught, and there was no Spanish class taught.

Assuming that the Brooklyn and Queens Houses of Detention do have a meaningful educational program, and they do teach English as a second language, would these be factors, in their cumulative impact, which would create a more humane environment for the inmates?

A They would.

Q If I were to tell you that in the twelve years the Queens House of Detention has been in existence, more than 1000 inmates, incarcerated therein, have earned high school equivalency diplomas, would that create --

A It is certainly better than any smaller number; not as good as any larger number.

Q The Report stated that at Attica there were no trained librarians and no adequate law libraries.

Assuming that an adequate law library and a law student were used in the Queens House of Detention, and that such a program was about to be instituted at the Brooklyn

House of Detention, would these be factors, in their cumulative effect, which would create a more humane atmosphere?

A Yes.

THE COURT: How much would they need a law library if their lawyers could see them more frequently, and they got to trial faster?

THE WITNESS: Certainly less.

THE COURT: All right.

Q The Report stated that at Attica an inmate had to visit a doctor through a screened mesh.

Assuming at Brooklyn and Queens an inmate goes directly to the doctor, to be touched by the doctor, and is separated by no mesh, would this be an aspect of a facility, in its cumulative effect, that would help to create a more humane environment?

A Yes, but I don't want -- It was only primarily that there was such a screen.

Q If that screen were removed, and never present, would that be a positive asset?

A Yes.

THE COURT: I was wondering how they take a man's pulse through a screen.

MR. FRIEDMAN: Thank you.

THE COURT: Anything more of Dean McKay?

MR. FRIEDMAN: One second, please, your Honor.

THE COURT: Yes.

(Pause.)

CROSS EXAMINATION

BY MR. FRIEDMAN: (continuing)

Q Do you know what programs are available for the inmates at the Queens House of Detention or Brooklyn House of Detention?

A You mean educational or vocational; what kind of programs do you mean?

Q Well, I mean any organized program throughout the institution; an arts and crafts program, educatioal, vocational, entertainment?

A I know there are arts and crafts programs in all the City institutions. There are educational programs available for inmates and there are recreational programs, in the sense of movies and some special features, and some athletic recreational programs, all too limited, in my judgment.

There is no vocational training --

MR. FRIEDMAN: I move that part of the answer be stricken.

THE COURT: You are asking an opinion. He can qualify it.

Motion denied.

A (continuing) There are, I assume no vocational programs for the detainees. There is no way this can be required, or even be permitted to work.

MR. FRIEDMAN: I wonder, may we have the Reporter read back the last answer?

THE COURT: Yes.

(Record read by Reporter.)

Q All too limited in your opinion -- You meant just the athletic programs, or all the programs?

A All the programs.

Q At the Queens House of Detention, how often is an inmate allowed to go to the arts and crafts program?

A I cannot give you a precise figure.

Q But you can say it is too limited?

A Yes.

Once it is posted, there is still the sixteen and a half hour lock-in time. That means there is not as much opportunity for the other kinds of programs outside the cellblock as I think desirable.

Q Assuming an inmate could go to arts and crafts five days a week during lock-out time -- You don't know how often he can go, and yet you say it is too limited?

A I have every confidence that it is not an opportunity available to all inmates at all times at the Queens

House of Detention.

Q But the fact of the matter is, as you just stated, that a person receives only a limited opportunity to go to the arts and crafts program, and you made that statement without really knowing what that opportunity was?

A I am saying that with the limited facilities there are, physically and for programming and the high population, there is no way in which all the inmates' natural desire for programmed activity can be satisfied.

Q Can you list all the educational programs available at the Brooklyn House of Detention for Men?

A All the educational programs?

Q Yes.

A There is, I presume, the high school equivalency training program; as you have already stated, a program of English as a second language, and there are, I believe, some college training programs in the community colleges in the area.

Q Do you know how often inmates are allowed to attend these programs?

A No.

Q But you only know it is too limited?

A Many of those programs are not ones that require attendance. They are programs to be done within a cell.

Q So then, are they not too limited?

A I can't say specifically. Freedom, any individual is denied what he would like in that respect, but the absence of program areas and correctional officers, which I consider an appropriate ratio to the inmate population, means something has to suffer.

Q Do you know what programs are available; educational programs, are available at the Queens House of Detention?

A No, but I assume they are the same as Brooklyn.

Q Would you testify that they are too limited?

A With the inmate population, in my judgment, they would have to be.

Q But you have never visited the Queens House of Detention, and you don't know the facilities for educational programs?

A No. I don't believe I have to know to make that general conclusion.

Q Do you know how often movies are available to the inmates of the Queens House of Detention?

A No.

Q Special features; jazz concerts, plays from the Theatre of the Forgotten are available at Queens?

A I do not.

Q You only know they are too limited?

A If there were half as many inmates in the same program area there would be roughly twice as much opportunity.

Q But you don't know what the program area is?

A Not at the Queens House of Detention.

MR. FRIEDMAN: Thank you.

THE COURT: Any redirect?

MR. GERITY: No.

THE COURT: I am glad we got you through in the afternoon.

Good afternoon, Gentlemen. 10:00 o'clock tomorrow, I guess.

Do you think you will finish your recitation?

MR. HERMAN: I think we are finished with everything except Doctor Kinsel.

THE COURT: Maybe we can get started on the City's witnesses tomorrow in the afternoon.

Mr. Herman, how many of the witnesses that you had today will be back tomorrow? Are they here as witnesses, or plaintiffs?

MR. HERMAN: Mr. Foy and Mr. Mocktezuma are here as Parties Plaintiff, and none of the Queens inmates testified yet, and one is a Party.

THE COURT: So, you want all these people back tomorrow?

MR. HERMAN: Please.

MR. MUSHLIN: There is one other Queens witness who had a prior engagement in State Court.

THE COURT: All right. I see.

(Whereupon, Court adjourned for the day until 10:00 o'clock A.M., January 22, 1974.)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

RALPH VALVANO, DONALD LEROLAND and JONATHAN WILLIAMS, individually and on behalf of all other persons similarly situated,

Plaintiffs,

- against - 70 C 1390

GEORGE MC GRATH, Commissioner of Correction for the City of New York; JOHN V. LINDSAY, Mayor of the City of New York; JOHN P. KENNEDY, Warden, Queens House of Detention for Men; ALBERT OSSAKOW, Acting Warden, Queens House of Detention for Men; THOMAS J. MACKELL, District Attorney, Queens County, individually and in their official capacities,

Defendants.

----------x

United States Courthouse
Brooklyn, New York

January 22, 1974
10:45 o'clock a.m.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

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A P P E A R A N C E S :

LEGAL AID SOCIETY
Attorney for the Plaintiffs

BY: STEVEN A. HERMAN, ESQ.,
MICHAEL B. MUSHLIN, ESQ.,
PIERCE GERITY, ESQ.,
M. VICTOR GEMINIANI, ESQ.,
Of Counsel.

ADRIAN P. BURKE, ESQ.,
Attorney for the City of New York

BY: DONALD J. TOBIAS, ESQ.,
-and-
JEFFREY FRIEDMAN, ESQ.,
Of Counsel.

* * * *

THE CLERK: Civil cause on trial, Valvano against Malcolm.

THE COURT: I'm told there's been a delay in the bus from Queens and the plaintiffs from Queens won't be here until sometime after 10:30.

Mr. Smith's direct examination was interrupted. I guess we won't be able to proceed with that until he gets here.

I'm inclined to go ahead with the hearing, anyway. Mr. Herman, is there anyone else you have as a witness?

MR. HERMAN: Mr. Montezuma.

THE COURT: Very good.

I have here a motion that was returnable on Monday for leave to file an amended complaint and Judge Costantino said he had no objection to my acting on it. I may not keep the rest of the Jenkins part aside from what is parallel with the issues in --

MR. VALVONE: No, but is there any objection, Mr. Friedman, to the filing of the amended complaint?

MR. FRIEDMAN: To what?

THE COURT: Filing of the amended complaint of Jenkins against Malcolm.

MR. FRIEDMAN: We will put in papers of opposition

to that by Monday, hopefully on Friday.

THE COURT: The papers were served on the 17th which is a little late for the motion.

You want it over to the 28th?

MR. FRIEDMAN: I would appreciate it.

THE COURT: Let's mark it submitted, papers to come by the 28th.

Mr. Herman.

MR. HERMAN: Mr. Montezuma.

MR. FRIEDMAN: Your Honor, just as a point of clarification on that, will the class action motion be heard on the same day?

I think there's a motion pending to have Jenkins declare a class action also. Could that be heard -- we would request that be heard on the same day.

THE COURT: All right, I'll hear you on Monday on that. Very good.

Swear Mr. Montezuma.

MR. FRIEDMAN: On the 28th?

THE COURT: Monday is the 28th.

MR. FRIEDMAN: Thank you.

(Continued on next page.)

Montezuma - direct 5B

RAYMOND MONTEZUMA, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. HERMAN:

Q How old are you Mr. Montezuma?

A Thirty-four.

Q What are you being held in the Brooklyn House of Detention for?

A I'm in there for robbery.

Q Have you had your trial yet?

A Yes, I have.

Q What was the result of that?

A Well, I didn't have a trial. I copped out to three years.

Q When was that?

A That was about three weeks ago.

Q Have you ever been convicted of a felony?

A Yes, I have.

Q Tell the Court when?

A 1960 I was convicted of attempted buglary three. 1970 it was another buglary attempted, burglary three. I got that under the Rockefeller, upstate, and there was a warrant on me and they gave me five years

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probation.

Q Do I understand you to say you did serve time in upstate institutions?

A Yes, I did.

Q Where in the Brooklyn House of Detention is your cell?

A My cell is in the sixth floor, lower C-1.

Q Do you have a cell partner?

A Yes, I have.

Q Mr. Montezuma, could you describe for the Court what it's like to live in a cell with another man?

A Well, first of all --

Q Please speak up.

A First of all, I like my privacy. This presents a problem with my cellmate because hardly there's any room there because this guy has his own property. We have to climb over things. I'm bumping into each other.

A few days ago my cellmate was sick and he vomitted. He occupies the upper bunk and all that vomit came into my bunk. That really upset me. I wanted to swing at him.

THE COURT: What?

THE WITNESS: I wanted to swing at the man for doing this to me. Then I held myself, being

that the man was sick. It wasn't really his fault.

There's another point I want to make clear on that is that he's got a body odor. His feet, they smell. And I believe that he cannot help this because I believe that this is a sickness and this presents a big problem to me, too.

I'm engaged in painting and I can hardly do no painting in my cell.

BY MR. HERMAN:

Q Why?

A Because it's so confined there that I can't work freely. Sometimes he'll be talking to me, distracts me. I can't concentrate on what I'm doing.

The things I keep in my cell, like my legal papers, whether he wants it or not, he goes through them and I don't like this.

Q How do you know he goes through your papers?

A I have a certain way of keeping my papers under the seat of the table and next to it he keeps his things, and he goes through my things without maybe knowing it, but he goes through my things.

I don't know what this man is, his background is. Really, I don't know who the man is. He was just put in there with me.

Q Have you ever seen him go through your papers?

A Yes, I have.

Q Mr. Ontezuma, where is the toilet that you used when you have to move your bowels or urinate?

A The toilet bowl is located at the back of the cell and next to it is the sink. Sometimes I would like to use the toilet. I would have to tell him to move out of the way because in the little space there is left, from the bunk to the other wall, there's only one person can fit there or stand there.

There's also the table there which occupies another part of the area we occupy, both of us. Either I have to tell him to move out of the cell or get on his bunk, and I believe that this here will irritate him, too, if he tells me to move out where I'm standing, you know, this is my cell, too. Being that he's there, I have to tell him this.

Sometimes at nighttime, very late at night, he might want to get up. It has happened. He uses the boilet bowel. He flushes, wakes me up, gets me up, gets me irritated. I might do the same thing. It gets him the same way, I believe, like when he washes his face in the morning, I got to sleep to the side -- my facing the back side of the cell, which is next to the sink. The water

gets on my face.

Q Why don't you sleep on the other end of the bed?

A Well, being that I sleep on the lower tier of that floor, that lower tier is always cold and I'm allergic to cold. Rather, I catch cold easily.

Q So you have to sleep with your head on the other side?

A Yes.

Q Mr. Montezuma, when you were upstate in the penitentiary did you have your own cell or did you share a cell?

A I had my own cell. I didn't share my cell with anybody.

Q Which did you prefer, to have your own cell, as upstate, or to have the man in the cell with you, as you do in the Brooklyn House of Detention?

A I prefer my own cell like I had upstate because of the privacy of it. Even the officers don't go in your cell when you're there. He asks permission to go into your cell. That's one thing that Brooklyn House doesn't have, privacy. The other can go in there, do anything he wants.

Q At the present time, do you participate in any programs at the Brooklyn House of Detention?

A I participate in a program which comes from the Brooklyn Museaum which is held on the sixth floor.

Q Held where?

A Sixth floor.

Q Where?

A On the C side of the floor.

Q Is it in the dayroom or on the tier?

A Dayroom.

Q Could you describe for the Court what the program is?

A The program consists of charcoal painting or sketching, pastels, water colors, things of that nature. They teach, if you want to learn, they teach.

Q How many times a week does this class meet?

A It meets once a week.

Q Where -- you told us -- I'm sorry.

A They meet like really they come up about 9:00 to 9:30. This is when they start, until 11:00.

Q It meets during the morning lockout, once a week?

A Once a week.

Q Have you participated in any other programs?

A I wouldn't say I have participated but I have been down to arts and crafts which is down in the basement

of the building.

The reason why I go down there is to talk to the other teachers that come from the Brooklyn Arts Museum. They don't allow them to come up because they are female.

Being I have a relationship with these people, I go down there.

Q What do you talk to them about?

A I talk about the things that I'm doing now, how I'm coming along with my work, the plans that I'm going to have when I get out. Things like that. They're trying to help me out.

Q Have you ever observed any arts or crafts classes?

A In which place?

Q Down in the basement.

A I have observed a few inmates going down to the arts and crafts.

Q Have you observed any classes?

A Well, yes, the times I've been going down there, I seen about 15 people going down.

Q How many?

A 15, the most.

Q How many times a week does the arts and crafts

meet?

A That all depends, too, because, for instance, last week, we were supposed or rather we were going down to arts and crafts and that which was a Monday, they called the officer which is in charge of the arts and crafts, told him he has to do yard duty or work at the yard. They cut that off. We didn't have that.

In other words, what I'm trying to say, is if they have it open, we do. If they don't, we don't.

Q Do you know how many times per week the class is scheduled for?

A Supposed to be scheduled every day.

Q Mr. Montezuma, do you work at the Brooklyn House of Detention?

A Yes, I do the cleaning up, serving food, things like that, which they call that the help.

Q How much are you paid?

A $6 a week.

Q What are your chores?

A Serving the food, giving it out, cleaning the dishes, collecting the silverware, things like that.

Q Could you tell the Court how you got your job?

A Well, I really got my job through a friend of mind. Being I was a friend of him, he asked the officer

to put me in the help.

At that time I didn't want to be in the help because at that time I was like by myself in cell No. 9, the top bunk was broken. They could put nobody in my cell. Being I liked privacy, I stayed there instead of going into help.

The reason I went to the help was because I already had pleaded guilty to a minor offense and I got three years. Being that I was short to go upstate, I said being that I'm short, I'll get on the help and do something else, just to get out of this cell.

Q You joined the help to get out of the cell?

A To get out of the cell.

Q Prior to being on the help, how did you -- could you describe to the Court how you spent your day at the Brooklyn House of Detention?

A Well, it's a boring day.

Q Could you describe to the Court what it consists of?

A During the 8:30 lockout, we come out. either you go to the dayroom or stay in your cell.

Q What do you do in the dayroom?

A You don't do nothing, specially on the sixth floor, C side. They don't have a T.V., a radio, no tables, a few chairs, that's all they have.

We've asked sometimes to cross over to the other side to at least watch a T.V. program. It's been denied. Now they're trying to get a T.V. This has been going on for two and a half months. The T.V. was broken. Everytime we see the captain, he says tomorrow. Tomorrow never comes.

Actually we don't do nothing, stand around, maybe play cards if you know how to play cards.

Q How many times a week did you leave your floor during the lockout times?

A Are you referring to visits and things like that?

Q In addition to going to the dayroom during the lockout time, did you ever leave the floor to go for any other activities?

A Well, we go once to the movies when they have it. We haven't been to the movies or rather seen a picture for two weeks. The times we go, sometimes -- I have been there 18 months, the Cincinnati Kid, three times. It's a boring picture about cowboys.

We also go to the gym. In order for us to go to the commissary, we have to go to the gym on Wednesdays. If you don't go up, they look you up, put you in the bin. They don't give you the opportunity of going to the gym

or staying down.

Q Do you want to go to the gym?

A Sometimes I feel like going, sometimes I don't. It all depends the mood I'm in.

Q When you go to the gym, what activities can you do?

A They have one basketball court, one volleyball court and one pingpong table. They have a few weights on the side.

Q How many men go up at one time?

A Being that you have to go, the whole floor has to go, I would say there's about 135, 140 men in our floor.

Q When you were upstate, could you give the Court a description of what your routine was there, your daily routine?

A My routine was that we get out of our cells about 8:00. We go to the messhall. From the messhall you go to work if you're holding a job. From there, you come back about 11:00 or close to 12:00. You go eat, have lunch, come back to you cell. They take a count.

In about 15 minutes, you get out again. You go up to the job. If you have a school program going, you go to the school. You finish that at 3:00 o'clock. You

come back out. It's up to you whether you want to go to the yard or go to your cell. If you want to go to the mess hall or go to your cell.

In the yard, they have all the recreation that you really need.

Q How many months have you been in the Brooklyn House of Detention?

A 18 months.

Q 18 months?

A Yes, sir.

Q Have you ever gone to an outdoor gymnasium at the Brooklyn House of Detention?

A No, I haven't.

Q Do you know if one exists?

A I know that they have an open roof-top but that is all I know about it.

Q Have you ever been up there?

A I have never been up there.

Q You mentioned -- where did you eat your meals when you were upstate?

A We ate in the mss hall, which is like a cafeteria. You go to a line. You pikc out what you want to eat. What you don't want you leave it. When you finish, you get up and walk out.

Q Did you prefer to eat in the mess hall or do you prefer to eat as you're doing now?

A I prefer to eat in the mess hall.

Q Why?

A Because especially the food I'm looking at; I know where it's coming from. I can pick what I want. I can leave what I want. I don't have to sit in a confined place like I'm sitting now.

Q Excuse me?

A I don'thave to eat in the cell.

Q Where do you eat in the cell?

A I have to eat in my bunk, sitting on my bunk.

Q Taking all the things that we've discussed under consideration, if you had to spend some time in a correctional institution, would you prefer to spend it upstate or Brooklyn House of Detention?

A Upstate, 100 per cent.

Q Why?

A Because of the privileges you have there. You have the privacy of your cell. Second of all, you have a whole lot of programs up there, either you work or don't work. You still get paid. You can learn something up there and things of that nature.

MR. HERMAN: I have no further questions at

this time, your Honor.

CROSS-EXAMINATION

BY MR. TOBIAS:

Q Mr. Montezuma, when you were at Rikers Island, did you have a cellmate?

A Yes, I did.

Q Now, did your experience in Rikers Island at which time you had a cellmate hurt you in any way?

A Emotionally, yes. I got disturbed.

Q Mr. Montezuma, do you remember the examination before trial that we had a few days ago?

A Yes.

Q Do you remember when I asked you, "After you got out of Rikers Island, after you had a cellmate, what affect did you notice on yourself?"

"Answer: Could you please rephrase that?

"Question: Sure. After getting out of Rikers Island at which time you had a cellmate, what affect did this have on you that you could have noticed?

"Answer: Really none."

In view of this testimony at the examination before trial, could you please characterize what affect it had on you after you got out of the institution?

MR. HERMAN: Objection, your Honor.

I don't think this man is qualifed to speak to any psychological damage in those terms.

THE COURT: Well, you asked a similar question, I think Mr. Tobias first should ask whether he gave these answers to the questions.

MR. TOBIAS: Yes, sir.

BY MR. TOBIAS:

Q Was that the answer you gave at the examination before trial, am I reading correct?

A What's that?

Q The transcript that I just described in these minutes --

A Yes.

Q (Continuing) -- did you say that?

A Yes.

Q How do you reconcile your testimony?

A How do I what?

Q Reconcile your testimony.

A You have to rephrase that, break that down.

THE COURT: Why did you say something different today than when you said Mr. Tobias was pressuring before.

THE WITNESS: I didn't notice the change in myself but people do notice change in me. That

doesn't mean I'm right or wrong.

Q Do you presently participate in the Brooklyn Museum arts program?

A Yes.

Q Would you please tell us whether that as a result of your participation in this program, you'll have some benefit after you get out of your incarceration?

A Yes, I'll have some benefits.

Q Do you think it possibly has some employment benefits later on?

A Yes.

Q How did you find out about this Brooklyn Museaum program?

A One day they happened to come up to the floor.

Q Who is "they"?

A The teachers that come from the Brooklyn Arts Museum.

Q Did you find out about this program as a result of any announcement made by a correction officer?

A The officer announced that as they were comingin, or rather they were walking with the officer. The officer was one who made the announcement.

Q Thank you.

Mr. Montezuma, are you aware of the educational programs offered by the institution?

A Yes, I am.

Q I take it that you haven't participated in these programs because you're simply not interested; is that correct?

A That's correct.

Q Every time you go to the gymnasium, do you personally participate in some type of activity?

A I do.

Q What activity do you personally participate in?

A I participate in volleyball.

Q How about basketball?

A I wouldn't say I participate.

Q You participate in something every time you go up there?

A Yes, if you call it that.

Q Thank you.

Do the correction aides takes take requests that are submitted by the inmates?

A They take them as far as I know. They take them. What they do with them, I don't know.

Q Does the institution have -- withdrawn.

Does the institution have a library?

A I would say they have a library but I don't consider that a library.

Q Please answer the question.

THE COUTT: I'll let the answer stand.

Q Does the library have Spanish books?

A They have a few.

Q Is it fair to say that off the resident floor about four times a week due to the participation program --

A If you mean visits on the floor, yes.

Q Mr. Montezuma, during your testimony on direct examination, you testified that your cellmate rifled through some of your papers, I take it?

A Yes.

Q At the Brooklyn House of Detention, during lockout periods, are the cell doors open?

A They are.

Q Is it possible that someone other than your cellmate rifled through your papers?

A My cellmate and the inmates, the officers, too.

Q It's possible that anybody could have done it?

A Yes.

Q Not just the cellmate?

A But I have seen it myself.

Q Mr. Montezuma, you're a sentenced inmate now, am I correct?

A Now, yes.

Q I take it then, as a sentenced inmate, you did have a single cell at one time?

A I had it.

Q Can I also assume, you volunteered to be placed in a cell with another individual to be placed on the work program?

A Yes.

Q Mr. Montezuma, you said that one of the characteristics of a double cell situation that you don't like is a lack of privacy?

A Right.

Q I take it that there are some times during the day when you would like to be alone.

Do you think that in a dormitory situation you could have this privacy?

A I don't think so.

Q Mr. Montezuma, how often are there movies each week?

A We supposed to go to the movies on Thursdays.

Q I take it from your earlier testimony you're not too pleased with the quality of the movies, shoot 'em up,

cowboys?

A I'm not pleased with them.

Q In other words, movies like The Cincinnatti Kid, is that a shoot 'em up cowboy movie?

A Gambling movie, had to do with cowboys, gambling.

MR. TOBIAS: No further questions.

THE COURT: Anything more?

REDIRECT EXAMINATION

BY MR. HERMAN:

Q Mr. Montezuma, how long has it been since you were sentended?

A Three weeks.

Q A sentenced inmate for three weeks?

A Yes.

Q For the rest of the time you were there, you were pre-trial?

A Pre-trial prisoner.

MR. HERMAN: I have nothing else, your Honor.

THE COURT: You can step down.

(Witness excused.)

THE COURT: Let me just mention, my chambers got a message from a woman who said that Edgar Andre in Three Upper A-6 in Kew Gardens wants to testify.

He testified on November 20th and 21st -- 24th, 1970, in this same case. At that time, he'd been there three years. I don't know what he's doing there now but I just report this and plaintiffs' counsel can decide whether he wants to call him or not, if we have another day's hearing.

MR. GEMINIANI: I would request after this that we can have a short adjournment in that the Queens people did not get here until 10:30.

THE COURT: You can bring them up to date. They came here during the middle of Mr. Montezuma's direct testimony. They didn't miss that much.

Mr. Smith, you were sworn yesterday. You may take your seat. You're still under oath today.

R O N A L D S M I T H , called as a witness, having been previously sworn by the Clerk of the Court, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. MUSHLIN (Cont'd):

Q Mr. Smith, as I recall yesterday, you were discussing your routine at the Queens House of Detention You were telling us about your afternoon

activity during the one to three o'clock lockout period. Do you recall that testimony yesterday?

A Right.

Q Would you continue and tell us what you do during the time that you are let out of your sell after 1:00 p.m.?

A After the lockout, mostly I go upstairs to the infirmary because I have asthma and I go up there to see my homies.

We're not allowed to go from one side to the other to visit them. I go up there to see them. That's the only way I can see them, really, to get off the floor.

Then we come back at 3:00 o'clock. Then I make a phone call if I want one or go right to my cell.

Q At 3:00 o'clock lock-in, you said you go in the bed and go to sleep; is that right?

A Yes.

Q What time is the evening meal?

A Evening meals are served at 4:00 o'clock.

THE COURT: 4:00 o'clock?

THE WITNESS: Right, 4:00 o'clock.

Q Are you awoken from your sleep?

A Right.

Q Could you tell us where you eat that meal?

A I eat that meal the same place I eat the rest of the meals, on my bed. You know, I use -- I sit the tray on my lap because it's too hot to sit it in my lap.

My cellmate sits at the table. He's been there before me. He has the priority to the table, you know.

After that, we just concentrate outside.

Q You feel comfortable when you're eating that meal?

A No.

Q Do you look forward to that meal?

A No.

Q What happens after the meal?

A After the meal? Then they come around and pick up the trays.

Before we eat our meals, the spoon man comes around all the time, before we eat our meals. The spoons are half clean, you know. We got to wash the spoons and all this. I can't wash it. My cellmate washes it most of the time. We can't both move together in the cell. He washed the spoons. I put water on my face. I eat.

Q What do you do after the meal?

A After the meal, I try to go back to sleep but

I can't.

Q Why do you try to go back to sleep?

A Because, you see, from 3:00 o'clock to 6:00 o'clock, that's the longest lockout. You know, it's three hours. Like then, like everybody on the floor know what time 6:00 o'clock is because they can tell. The minutes go by so slow, nothing to do, always frustrating. If you don't go to sleep, you don't think about it; know that I mean? Everybody tries to go back to sleep after they eat but they can't. People start making noise and commotions and officers, they get uptight behind that.

Q Do you try to read?

A Yes. It don't help.

Q Why not?

A Because every timeyou read, you know what I mean, and then you look up at your cellee and the bars, it's too much. It's a strain. You can't comprehend nothing to read.

Q What happens at 6:00 o'clock?

A 6:00 o'clock, when 6:00 o'clock comes, everybody is glad to get out.

MR. FRIEDMAN: I object, your Honor.

THE COURT: Overruled. I'll let him state it. This is his view.

THE WITNESS: Everybody is glad to get out, a breath of fresh air. Everybody runs for about an hour. Nobody is on the tier at all. They don't want to come near the cell, no part near themselves. They're either locked in the dayroom or everybody is down at the front gate until you get used to the place again, being out.

You know what I mean? Then we hang around.

Q How do you feel when you come out of the cells?

A I feel good getting out of there.

Q What do you do during the evening lockout period?

A During the evening lockouts, we just mostly everybody is looking forward to the evening anyway. This is the only time we can look at T.V. T.V. is the closest thing to the word to us, you know. Nobody confines with the outside by looking at T.V., the news, the pictures that come on.

THE COURT: We'll have to take a short interruption now. I'll be back in 10 or 15 minutes.

(Recess taken.)

(Continued on next page.)

DIRECT EXAMINATION

BY MR. MUSHLIN (Cont'd):

Q Mr. Smith, before the recess, you were telling about the lock-in time at 6:00 p.m.

Would you tell us what it was at that time?

A What I said -- you're talking about when we lock out.

Q When you lock out, yes, sir.

A You know, we feel good, you know, like we lock out because it's like coming out of a subway, man, into air again. You breathe again, get away from the cellee and his funk.

Q What do you do during that lockout period?

A The lockout period? Mostly go down, mostly go downstairs. I stay down there until about 7:00 o'clock.

A lot of people go in the dayroom, look at the news.

Q When you say "go downstairs, as to what area do you mean?

A To the front.

Q To the front gate?

A Yes. Like, then we stay down there until 7:00 o'clock.

Q What's in that area?

A Nothing, all inmates.

Q Is there any furniture there?

A No.

Q Do you stand?

A We stand.

Q Up against the bars?

A Against the bars, against the wall.

Q A number of inmates congregate in that area?

A Yes.

Q Continue.

A You can't goto the dayroom because the people are looking at the news. They don't want to hear the noise. Everybody goes downstairs.

Q Is it noisy?

A Yes. A whole lot of noise. Especially when you're going to sleep.

Q Continue.

A After, expecially when you lock in, then you're ready to go to sleep and everybody is making noise, constantly keeping you up.

THE COURT: You were up at 7:00 dclock? You were up to 7:00 o'clock?

THE WITNESS: Then we come upstairs. After we come upstairs, they go their way. Some dudes

stand on the tier.

Q Where do you go?

A I go look at T.V.

Q In the dayroom?

A Yes. Because at that time, like I said, T.V. brings me home.

Q Where do you sit to watch T.V.?

A Chairs.

Q How many chairs?

A There are 18 chairs.

Q Is that for the entire floor?

A 60 inmates.

Q The entire side?

A Yes, mostly everybody has their name on their chairs, you know, the ones that have been there the longest, they got their own chair.

Q When you say "have their name," you mean actually have their name engraved?

A They have a mark on the chair to tell them which chair it is.

Q Do you have a mark on a chair?

A I ain't got no chair.

Q Where do you sit?

A When my cellee gets up, I sit down in it.

Q In the dayroom?

A I sit by the wall, a ledge.

Q Continue. What else do you do? Do you watch T.V. for the entire period?

A Yes, about 10:00 o'clock.

Q What happens at 10:00 o'clock?

A Then 10:00 o'clock comes, the officers come around and locking us in. Nobody want to lock in then.

Q Why not?

A We only had three hours out, three or four hours out. Everybody is stretching out at that time. You know, like everybody at that time --

MR. FRIEDMAN: I have to object.

THE COURT: "Everybody," I'm not going to take.

Q Continue.

A Like mostly everybody is looking at a picture.

THE COURT: What do you do?

Q Tell us what you do.

A I look at the picture, too. I look at T.V. You know, I'm looking at ABC movies, Sunday night moves, whatever. We don't want to see half of the picture and I see the ending. So we start an argument with the officers. The officers tell us to lock in. They start getting bossive, start bossing us, what we're going to do, call the riot

squad. Everybody goes to lock in.

Q So then you go and lock in at 10:00 o'clock?

c A Right.

Q What do you do then?

A I have to sit on my bed. I have to wait for my cellee to leave the sink first. This happens every night.

After he uses the sink, he gets up on his bed. Then I use the sink. Then after I use the sink, I get on my bed, stay on my bed for the rest of the night.

He gets in the chair, you know. He maybe talking next door to one of the neighbors. After you do that, then he gets into the bed, right. Then I'm ready to read now. I sit in the chair and read.

He tells me I got to go to bed. He's going to put the lights out, put a cover over the lights. I told him, like what do I look like to you, a kid? Tell me what time to go to bed?

This is always leading to an argument every night. We almost got into a fight the other night because of that. He told me: I'll be glad when yo leave.

Q What time do the lights go out?

A Lights go out at 10:30.

Q Throughout the institution?

A Right.

Q What do you do after the lights are out?

A After the lights go out, I like to read at night, so I got to squeeze near the bars, on the floor and look from the catwalk. They have a dimmer out there. I read from there.

Q Have you ever woken up during the night?

A Yes.

Q What happens then?

A A lot of nights, like I'll be restless. Really, we don't trust each other. That's the whole thing about it. Sometimes, like I look up, I see him, I don't know what's on his mind, you know.

He tells me don't touch a few things. I tell him the same, you know. Like, what we do is like we try to stay far apart from each other as possible.

Q Are you frightened of having a fight during the evening locked in your cell?

MR. FRIEDMAN: Objection.

THE WITNESS: Yes.

THE COURT: Sustained.

MR. FRIEDMAN: Leading questions.

Q What cell location are you in?

A 12, Upper C 12.

Q How far is that from the bridge area?

A What do you mean, how far?

Q How far is that from where the officer is stationed?

A That's the twelfth cell from the officers, downstairs.

Q Is there a toilet in your cell?

A Yes.

Q Is it enclosed?

A Yes.

Q Open toilet?

A Open toilet.

Q What do you do when your cellmate wants to use the bathroom?

A I have to sit up in my bed, turn the other way, especially when he sits down on the toilet to move his bowels. I have to turn away from him.

Q Why?

A I mean I don't want to smell him.

Q What is he doing when you use the bathroom?

A The same thing. It's constantly happening.

Q In your criminal case, have you pled guilty?

A Yes.

Q Have you been sentenced yet?

A No.

Q You're awaiting sentence?

A Right.

Q Do you feel anxious about your case now?

A No. I feel relieved now.

Q Do you feel tense?

MR. FRIEDMAN: I object.

THE COURT: Sustained.

MR. MUSHLIN: This goes to his feelings.

THE COURT: Don't tell him what his feelings are.

Q How do you feel?

A I feel relaxed as far as my case is concerned. I feel tense about being in the cell with an inmate. He already got sentenced there already. He don't care no more about nothing. Like he got sentenced Thursday. Every night since Thursday, you know, like there's been a whole lot of homosexuals coming over to our cell. You don't care no more.

Q What do you mean, homosexuals come to your cell?

A Homosexuals that escape from the third floor. They put them on any floor. They sign homo papers.

MR. FRIEDMAN: I object. He doesn't know

what the administration does or if these people were scaped.

THE COURT: All I can say, there are people on the floor that he says are homosexual.

Q You said homosexuals come to your cell. Can you tell us what happens?

A What happens?

Q Why do they come to your cells?

A Because my cellee would be paying them off to come to his cell. He got to get his frustration off somewhere. He's not going to get it off on me.

Q Have you observed any fights on your floor?

A Yes.

Q Would you tell us about them?

A I observed one fight on my floor. It was boxing. I observed a dude got stabbed coming out of the showerroom.

Q When was that?

A This was about four months ago.

Q Have you observed any other fights on your floor other than the once you just told us about?

A In Queens House of Detention?

Q Yes, sir.

A Almost a fight every night. Everybody is

arguing with different people, specially with their cellees. The only time they can get away from them is when they lock out. When they get away from them, we really get away from them when they lock out.

Q Have you been in a fight?

A Yes.

Q How many?

A Four.

Q Could you tell us about the latest one?

A The latest one happened about six months ago after I got out of the hospital.

THE COURT: What?

THE WITNESS: After I got out of the hospital in Kings County.

A We were looking at T.V. You know, like, the dude got up and turned the T.V. Everybody is interested in one picture. The dude turned the T.V.

I said, "What's the matter with you, man?" I told everybody, "Look here, man, we can't have this going on."

So he said, "Man, you better shut up before I punch you in the mouth." "You're not going to punch anybody in the mouth."

We went into a walking area, catwalk, and we

had it out there. I went down for that.

Q On a typical day, do you know what the weather is outside?

A No. Yesterday I didn't even know it was cold. I didn't wear my jacket.

Q Do you feel moreor less tired now than you used to on the outside?

A Yes.

Q You feel more tired or less?

A I sleep more than I did on the outside.

Q Do you participate in any activities in the institution?

A Then again I did; Queens House of Detention, no.

Q What program did you participate in in the Brooklyn House?

A Mostly when I went to the gym, played cards for pushups. Know what I mean? You can't do that, like in the Queens House of Detention.

Q Why not?

A Because there's not enough room. Once everybody is in the dayroom, that's 60 inmates in one dayroom. Like you can't to take up all that space.

Q Do any activities take place during lock-in

hours?

A No, nothing.

Q Have you asked to participate in any program in Queens House?

A Yes.

Q What?

A I wanted to get up to weight lifting, right? I wanted to get into the law library. They told me I have to wait. I have to put in an interview slip. It's right on my floor. It's before me -- I haven't been called.

THE COURT: Did you put in an interview slip?

THE WITNESS: Right. This is why we asked, you know, like we have representatives of the floor. They go to the representatives, counsel meetings. Like your representative asked the counselor why we didn't participate in any of the programs upstairs.

MR. TOBIAS: Objection, your Honor.

THE COURT: Overruled.

THE WITNESS: This is our biggest beef, no --

THE COURT: What's the question this is in answer to?

MR. MUSHLIN: The question is: Have you

participated in any programs?

THE COURT: Go on. This isn't really and answer to it. Go on.

MR. FRIEDMAN: This is based on hearsay, what the counselor told the house representative.

THE WITNESS: We had to inform the counselor.

THE COURT: Don't just talk. You're supposed to answer questions and stop when you're finished.

BY MR. MUSHLIN:

Q Mr. Smith, have you ever lived so closely with another person as you do with your cellmate in the Queens House?

A No.

Q Do you like it?

A No.

Q Would you prefer to have a cell to yourself?

A (No response.)

Q Would you prefer to be one person in a cell?

A Yes.

Q Why?

A Then I have my own privacy.

MR. MUSHLIN: No further questions.

(Continued on next page.)

CROSS-EXAMINATION

BY MR. FRIEDMAN:

Q Good morning, Mr. Smith.

Are you aware of the programs that are available at the Queens House of Detention?

A Yes, I am.

Q And you say you have put in an interview slip for these programs?

A Right.

Q Which programs?

A I put in for weight lifting and law library.

Q With whom did you put in this slip?

A What?

Q With whom?

A I put in one to Capt. -- I forget the captain's name offhand.

Q What does he look like?

A A short man with glasses, the only light-skinned captain.

Q Light skinned. Is he black?

A Black.

Q Light-skinned black, short?

A Yes. And Mr. Bailey, the law library officer.

Q Mr. Bailey?

A Right.

Q Who is he?

A The law library officer.

Q Where did you see him when you put in this interview slip?

A I seen him up in the law library.

Q Up in the law library?

A Right.

Q You have been at the law library?

A You can't get into the bars, the gate. When you go to the infirmary, the infirmary is on the same floor as the library. You go right to the gate and ask him could you come in. He said no.

Q Isn't it true the law library is way back of the room in which the law library is held?

A Yes, always in the back, but there are two libraries. The guard is at the gate to let you into the back.

Q That's Mr. Bell?

A Yes.

Q Did you have an interview slip with you at that time?

A No.

Q Did you ask him to fill out an interview slip?

A I filled one out.

Q When was this?

A Back in November.

Q You haven't been to the law library?

A Right.

Q You had testified I think that lock-in time is 10:00 o'clock.

A At night.

Q At night.

A At night.

Q And that your cellmade at that time then sits on a chair and talks to people in another cell?

A Right after we wash up.

Q How long does it take to wash up, the two of you?

A About 15, 20 minutes.

Q Then after that, how long does he sit on this chair and converse with people next to him?

A About 15 --

Q Then lights out are at 10:30?

A Right.

Q When does the time come that you want to read and he covers the lights if every night he sits on this chair and after a half hour --

A Sometimes the light doesn't go out to 11:00. Not every night the lights go out at 10:30.

Q Which nights?

A Depends what officer is on.

Q Which officers leave the lights on?

A They don't have special officers at night.

Q So that you can't say when the lights were on until 11:00?

A No, because you hear by the radio.

Q Now, you have testified that your present cellmate is a homosexual?

A No, I didn't say he's a homosexual. I said he goes searching for homosexuals.

Q Would you characterize searching for homosexuals as strange behavior?

MR. MUSHLIN: I object.

THE WITNESS: If you be down a long time, nothing is unusual.

Q So you would not consider that to be strange behavior?

MR. MUSHLIN: I object.

THE COURT: Overruled.

THE WITNESS: No.

Q But you do consider walking naked to be

strange behavior?

A Walking naked?

Q That's right.

A Is a different thing to me.

Q You have testified, I think, that you have been involved in four fights.

A Right.

Q Is that your testimony?

A (No response.)

Q Do you recall that on January 17, 1974, at approximately 10:30, we engaged in an examination before trial?

A Right.

Q And you recall the following question being propounded to you?

A Right.

Q "Question: So how many" --

MR. MUSHLIN: The page number.

MR. FRIEDMAN: Nine.

Q "Question: So how many fights were you in during your 34 months in incarceration?

"Answer: About six."

Was that the answer you gave?

A I said about six.

Q Now you're saying about four?

A Around four, six, right.

Q You've been in a lot of fights?

A Yes.

Q Not all of these were with your cellmate, were they?

A No. I said two with my cellmate.

Q I think you testified, also, on direct examination that at Brooklyn, the programs you were involved in were playing cards for pushups?

A Right.

Q And that you can no longer do that at the Queens House of Detention?

A Right.

Q Q Do you recall at the time that we held that examination before trial on January 17, 1974, at 10:00 o'clock in the morning, the following questions being propounded and answers given?

I'll read the questions:

"Question: What about when you were at the Brooklyn House of Detention, did you take advantage of those programs?

"Answer: Yes.

"Question: Which ones did you take advantage of?

"Answer: I was taking advantage of the night school.

"Question: High school equivalency, is that it?

"Answer: Yes. At about 6:00 o'clock at night, the alternate from one side to another once a week."

Do you remember those questions having been propounded?

A Yes.

Q Are those the answers you gave at that time?

A Right.

Q Did you in fact at Brooklyn take advantage of the high school equivalency program?

A Right.

Q Also, during our pre-trial examination conducted at the same time and place, do you remember the following questions being propounded to you?

MR. MUSHLIN: Page, please.

MR. FRIEDMAN: 16.

Q Let me ask you this: Was it your testimony there is no room at the Queens House of Detention to engage in pushups?

A Say that again?

Q There's no room at the Queens House of Detention

to engage in pushups, and sit-ups, such as up in the Brooklyn House of Detention?

A Right. You have to go downstairs.

Q Do you remember the following questions and answers propounded during the pre-trial examination?

MR. FRIEDMAN: This is quite lengthy.

THE COURT: Go ahead.

Q Starts on page 15:

"Question: Do you have a regular program set up for yourself?

"Answer: Yes, pushups. We play cards for pushups.

"Question: Somebody loses, he has to do so many pushups?

"Answer: 15, it's an exercise game.

"Question: How often do you play that?

"Answer: We play that almost every day until somebody is ready to drop out.

"Question: What about situps, do you do any situps or anything like that?

"Answer: No, they don't do too many situps, just pushups, and chinups on the bars.

"Question: Did you do that every day almost?

"Answer: I did that every day when I was

waiting for a phone call. You know, keep myself occupied.

"Question: How often would you make a phone call, about every day?

"Answer: We make it once a day.

"Question: That was the policy, you're allowed to make one phone call a day?

"Answer: Yes, sometimes you can make two if people don't want the phone calls. You know, how many people want the phone calls, make two.

"Question: What about now, you're at the Queens House of Detention? Have you continued your exercise program?

"Answer: I thought you were talking about the Queens House of Detention."

Were those questions propounded to you at the time of this examination before trial?

A Right.

Q Were those the answers you gave at that time?

A Right.

Q Did you go to the gym when you were incarcerated at the Brooklyn House of Detention?

A Yes.

Q Did you participate in any other programs

over there besides the high school equivalency and the gym?

A No. Not that I can think of.

Q Isn't it the truth that that is because you were not interested in anything except the gym?

A I was interested in art.

Q Referring to the same examination before trial, do you recall the following question being propounded to you, page 13.

"Question: What about the arts and crafts program there? Did you take advantage of that?

"Answer: I didn't know they had one over there."

Was that question propounded to you?

A Right.

Q Was that your answer?

A Right.

Q Was the following question also propounded to you:

"Question: How about any other programs over there?

"Answer: No, the only thing I was interested in was the gym."

Was that question propounded to you and was that your answer to that question?

A Right.

Q When you went to the gym in Brooklyn, when you were incarcerated at the Brooklyn House of Detention, what activity did you participate in?

A Basketball.

Q How about lifting weights?

A Sometimes.

Q How about playing ping pong?

A No.

Q Never?

A No.

Q Do you recall at the pre-trial examination, the following question being propounded to you:

"Question: What did you do when you went to the gym, play basketball?

"Answer: Basketball, lift some weights and play ping pong."

Was that question propounded to you?

A Yes, but I never lift weights -- I mean ping pong.

Q Did you answer at that time that this examination was taken that you didn't play ping pong?

A They play ping pong there.

Q Was that your answer to the question that I

read that basketball, lift some weights and play ping pong?

A Maybe.

Q How often did you make phone calls at the Queens House of Detention, if you remember?

A Supposed to make it once a day.

Q Are you allowed to make a phone call once a day if you desire to make one?

A Right.

Q When you were at the Brooklyn House of Detention, is it not true that you were in a position -- you were in charge of the phones?

A Right.

Q And thereby, you could make phone calls virtually as many times a day as you wanted to?

A Right.

Q You do admit when you were at Brooklyn, you had a regular exercise program of pushups, chinups, were involved in card games --

A Right.

Q (Continuing) -- conducted on a daily basis?

A Right.

MR. FRIEDMAN: No further questions, your Honor.

THE COURT: Mr. Smith, I would like to get

chronology here.

You were convicted of robbery in '69?

THE WITNESS: Yes.

THE COURT: You were sentenced to three years?

THE WITNESS: Right.

THE COURT: And how long had you been at Rikers Island before the conviction?

THE WITNESS: When I got -- I was on probation, you know.

THE COURT: You were where?

THE WITNESS: Court's probation, paroled me in my own custody. When I copped out --

THE COURT: Yes?

THE WITNESS: Then when I went back to sentence, they gave me three years.

THE COURT: Where did you do the three years?

THE WITNESS: New York State Reformatory.

THE COURT: When did you get out?

THE WITNESS: I got out January 19, 1971.

THE COURT: So you served somewhere around two years then?

THE WITNESS: No. I served only a year.

THE COURT: Then you were arrested in March, '71, while you were on probation; is that right?

THE WITNESS: Right.

THE COURT: What's been happening to your Robbery One case during the time from March, '71?

THE WITNESS: I pled guilty to a C felony.

THE COURT: When was that?

THE WITNESS: June.

THE COURT: In June of '71?

THE WITNESS: Right -- '70.

THE COURT: '70. What sentence did you get on that?

THE WITNESS: I was supposed to get no more than five years.

THE COURT: When were you sentenced?

THE WITNESS: I didn't get sentenced yet.

THE COURT: What's been happening since June?

THE WITNESS: They haven't called me to Court. They too, me off the calendar.

THE COURT: Why do you suppose that?

THE WITNESS: When I went back for sentence in July, the Judge said I was intoxicated. He couldn't sentence me.

THE COURT: Were you intoxicated?

THE WITNESS: Yes, the pills they were giving me in Atlantic Avenue.

THE COURT: Who gave you pills?

THE WITNESS: The doctor.

THE COURT: What were the pills given for?

THE WITNESS: Like to calm you down.

THE COURT: From July to January, what's happened on sentencing?

THE WITNESS: Nothing. I haven't been back to Court.

THE COURT: Have you been in touch with your lawyer about it?

THE WITNESS: Yes, every time my sister goes down there, he goes out the back door. They tell her he's not there.

THE COURT: Have you written to him?

THE WITNESS: Yes. I didn't get no reply.

THE COURT: This is a retained lawyer or 18-B lawyer or Legal Aid?

THE WITNESS: 18-B.

the court: Any other questions of Mr. Smith?

MR. MUSHLIN: Just one.

REDIRECT EXAMINATION

BY MR. MUSHLIN:

Q During the period of this incarceration, you were incarcerated both at Brooklyn and at Queens; is that

correct?

A Brooklyn, Queens, Rikers Island.

Q During the deposition, were you sometimes confused as to which --

MR. FRIEDMAN: Objection.

Q (Continuing) -- which was being discussed?

THE COURT: Sustained. That's a leading question.

MR. MUSHLIN: Your Honor, I would ask the deposition of Mr. Smith be introduced into the record or alternatively I be allowed to read certain questions and the responses.

MR. FRIEDMAN: For what purpose?

MR. MUSHLIN: To indicate that at time it was unclear during the conduct of the examination, these issues were being discussed.

MR. FRIEDMAN: I'll be glad to enter the whole thing.

THE COURT: Let it be marked as an exhibit.

MR. FRIEDMAN: As to whether or not Mr. Smith has given different testimony, whatever he's clear about.

THE CLERK: Deposition of Ronald Smith marked Plaintiffs' Exhibit 2 in Evidence.

(So marked.)

MR. MUSHLIN: No further questions.

MR. FRIEDMAN: Could I ask a question?

THE COURT: What;s the name of your 18-B lawyer?

THE WITNESS: Abrams. That's all I know, the same name as the Judge.

MR. FRIEDMAN: Could I ask a question?

THE COURT: I suppose this relates to the Wallace case rather than to this case and its the district attorney, rather than the corporation counsel, who is concerned with delay.

MR. FRIEDMAN: It's not me for once.

THE COURT: Go ahead.

RECROSS-EXAMINATION

BY MR. FRIEDMAN:

Q When you were giving your direct examination here today, Mr. Smith, was that conducted in a manner similar to the examination before trial? In other words, just the questions put to you and answers?

A Excuse me, I don't understand.

Q Was the direct examination here today when your counsel asked you questions, similar to the examination before trial wherein I put questions to you for your

answer?

A It was similar.

Q Were you confused today when you answered many of the questions that your counsel asked you and were those answers a result of that confusion?

A No.

MR. FRIEDMAN: Thank you.

MR. MUSHLIN: No questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: What's next?

MR. MUSHLIN: Mr. Charles Bruner, your Honor.

C H A R L E S B R U N E R , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. MUSHLIN:

Q Mr. Bruner, what is your homes address?

A 1500 Sterling Place, Brooklyn.

Q Would you please try your best to keep your voice up?

A I have a cold. I just got over laryngitis.

Q How old are you?

A Twenty-eight.

Q Have you ever been convicted of a crime?

A Yes.

Q What crime?

A 1960, petty larceny, received three years, and in 1965, I had a felony, received five years, and in 1971, I had a felony with the stipulation where the three-year bit came out.

THE COURT: What?

THE WITNESS: Three year bit I received, it was broken down to a D felony. I received three years.

Q As a result of those arrests and convictions, have you served time in New York State penal institutions?

A Yes. The correction that they had in 1960, Auburn, Greenhaven, Sing Sing.

Q Have you been incarcerated in any New York State jails?

A Brooklyn House of Detention and Queens House of Detention.

Q When?

A Brooklyn House of Detention was in 1961. It was for a misdemeanor. 1960, also. 1965 was in Brooklyn House of Detention.

Excuse me, I made a mistake, yes, 1965, when they switched me over from Brooklyn House of Detention to Kew Gardesn.

Q How long did you remain in Kew Gardens?

A About six or seven months.

Q Any other times?

A No.

Q And now?

A Yes.

Q How long have you been detained at the Queens House of Detention?

A Now?

Q Yes, sir.

A About three months.

Q What is the charge that you were arrested for?

A Possession of a controlled substance and a misdemeanor.

Q What bail are you held on?

A $7,500.

Q Are you now waiting for bond?

A Yes.

Q What's your occupation?

A Clerical worker. I used to work at UNISEF.

MR. FRIEDMAN: Your Honor, I'm aware that

Mr. Bruner cannot speak up. Would it be improper if I sat closer?

THE COURT: Yes, you can come up, sit in the Jury Box.

(Mr. Friedman complies.)

BY MR. MUSHLIN:

Q Where are you housed at the Queens House of Detention, what location?

A Fourteenth floor, Upper A-6.

Q Do you have a cellmate?

A Yes, I do.

Q How many cellmates have you had?

A Since I've been there, I've had four.

Q Now, where do you eat your meals at the Queens House?

A In the cell. I eat on the bed because I have the lower bunk. He has the top bunk. He eats at the table.

Q Where do you place your tray?

A On my lap, on top of the pillow which I put on my lap.

Q When you were up in New York State penal institutions upstate, where did you eat?

A In the mess hall until I had received a block-man's job. Then I still ate in the mess hall.

Q When you were incarcerated in the Queens House of Detention in 1965, where did you eat your meals?

A On the seventh floor, where the mess hall was.

Q Now, which would you prefer in this -- eating meals in the cell, that you do now, or the mess hall?

A I prefer to go the way they had it in '65, the mess hall.

Q Why?

A They had the wagon that come up to the floor, right? It was the same wagon that came up to the seventh floor in '65. It always -- the difference is you have the plugs to keep the food heated. When it comes on the floor, right, they don't have the outlets, as many outlets on the tier floors as they have on the seventh floor.

In essence, like the food eventually becomes cold by the time everybody receives it, by the time I receive it.

Q Any other reasons why you prefer eating --

A Because when I'm eating, right, and having a cell partner, it's distracting if he wants to go to the bathroom, defecate or something. I'm eating at the time and if it's a rush thing, I can't tell him: You can't go to the bathroom. Wait until I finish eating. He can't

tell me: Put your food out of the cell; or I'll go out. There's no vehicle that we can splut up at all. Our cell is locked.

Then it comes in to a little space in the cell and the top of the food may sometimes touch the bars, also; right? No matter how much you clean them bars, like dust is coming in there because the windows are not open tht much. You are breathing dust, too; right? That also gets into the food.

Q Is the tray ever hot when it comes in?

A Is the tray ever hot?

Q Yes.

A No.

Q When you put the tray on your legs or you have a buffer --

A I put the pillow on my leg, my lap. I put the tray on to give it more lift.

Q Where do you keep your personal -- do you have personal belongings with you?

A Some.

Q Where do you keep them?

A Under the bed in a little section. He keeps it under the bed, also, in a little section.

Q What about your clothing?

A That also is under the bed.

Q Where did you keep your belongings when you were incarcerated in New York State penal institutions?

A They had cabinets. You have cabinets or desks, as you call it. In Sing Sing, they have desks.

THE COURT: What?

THE WITNESS: They have desks. In Greenhaven, in Auburn, we have cabinets where you keep your boxes and so forth so no dust gets in them.

Q When you were incarcerated at Kew Gardens in 1965, where did you keep your personal belongings?

A They had a cabinet there about six feet high cabinet, about three feet long, right? They used to keep them in there.

Q Which would you prefer, keeping your clothing in a cabinet or the way you do now?

A I prefer to keep them in a cabinet.

Q Why?

A You can hang them up. Like I said, the dust, the cells stay dusty. That also ruins the material of the clothes. You have no vehicle of cleaning them in Kew Gardens at all.

Q Now, when you were serving time in New York State penal institutions, were you incarcerated in a cell?

A In State penal institutions?

Q Yes, sir.

A The State?

Q Yes, sir.

A One to a cell.

Q One to a cell. Which do you prefer?

A I prefer one to a cell.

Q Why?

A Because it's more -- less tension for me. You don't know what type of cell partner you get. There's less tension for him. He don't know what type of person I am.

There's a communication barrier and what I was doing before he got there and probably what he wanted to do since he come there, so this causes a barrier, too.

The fact I'm on the bottom bunk, he may let loose air or fart. Whoever is on the bottom or whose cell it is, they have to receive the smell.

Besides that, I may want to read. He may want to move around. The bed, the top bunk is more flexible than the bottom bunk. The springs are rusty. The bed is rusty, actually. The mattresses are old. Whoever is on the bottom bunk again receives any debris that falls out of the mattress.

Then you have the water sink beside the bed. Every time the pressure of that water hits, that falls on the food on the bottom bunk. If there is one person in a cell, there is no real problem of moving around because -ou don't bump into each other.

There's no problem where you want to put the stuff. There's no problem what you want to do because you have no one else to try to communicate to, you know? The whole thing is more relaxing. Then if you ever get in a fight there, you more or less are going to end up killing each other. The police can never get there. You fight harder in a cell than you would in a tier.

Q You talked about the toilet. There is a toilet in the cell?

A Yes.

Q What arrangements do you and your cellmate have when you want to use the bathroom?

A I want to go, he turns his back, to occupy himself in some other way.

Q Why?

A Out of respect for m..

MR. FRIEDMAN: I object.

THE COURT: We don't have to have the same testimony from every witness about the things that

were perfectly physically obvious.

Move on to something else.

MR. MUSHLIN: Right.

BY MR. MUSHLIN:

Q Are you involved in a program?

A Yes.

Q Provided at the Queens House of Detention.

Could you tell the Court what programs you're involved in?

A I work on the paper. The Ethical Culture class, I'm with the Seventh Day Adventists and off and on we're allowed to go to the gym to sing.

Q Let's take one at a time.

Is that the inmate newspaper?

A Yes.

Q How many people work on that?

A Five, three now -- two. Because they just got shipped upstate.

THE COURT: What?

THE WITNESS: Some of the staff just resently, today, got shipped upstate.

Q Where is the office for the newspaper?

A On the seventh floor.

Q How often do you go?

A Every day.

Q During the lockout periods?

A Yes, only during the lockout periods.

Q How did you find out about it?

A From continuously going up when I first came in. I wanted to get personal things straightened out on the street. I was going up to the social counselor. I happened to see the paper. I was writing some thing sup there.

I asked about the college program, whether I could take one and she stated that she didn't know because this was never asked as a request before. She had checked with my Greenhaven record to find out I did have some study courses I asked her about.

She approached the thing on her own. She went and found out for herself and told me about it. I asked for some of the functions, told about the newspaper.

Q You found out.

The Ethical Culture Society, how often does that meet?

A Comes in twice a week.

Q What day?

A Wednesday and Friday afternoon.

Q During the lockout period?

A Right.

Q What program -- what is that program? Could you tell the Court what that is?

A Wednesdays, remedial and English. On Friday, it's advanced English.

Q How many people take that program?

A About seven.

Q I'm a little confused. When you say seven people, do you mean seven people totally or seven on each day?

A Whoever comes on Wednesday is coming on Friday because that list, the Wednesday list is also the Friday list.

Q Now, you mentioned the Seventh Day Adventists

A Yes.

Q (Continuing) -- program. What is that, tell it to the Court -- excuse me.

If we can go back to the Ethical Culture --

A I seen people coming off the tier, not one person -- he was coming off the tier. I inquired about where he was going. He explained it to me, told me what it was. I gave him the name the first time. That week went by. I gave my name again. I wrote out interview slips and gave him that, also. That following week after that

they called me up.

Q What floor is that on?

A Seventh floor.

Q Seventh Day Adventist program, could you explain to the Court what program that is?

A About 15 or 20 people coming from the street and they try to help in some social way the problems that the people have here. They can't get in touch with their families, go to their houses beside it being a regular church service, whatever counseling part, that starts about 15 minutes a day.

Q When does that begin?

A Saturday afternoon during lockout.

Q How many people participate in that program?

A I would say about 40 people.

Q How did you find out about that program?

A Again, seeing people walk off the tier. I inquired where they were going. They had explained it to me, right? I had given my name. The thing is whether you give your name or not, they don't you call you up.

Again, it's whoever is on the list that when it started, again, just who gets called up. If somebody new comes in, it's fairly often you get on the list; right? There was a mixup with the schedule and it made one

of the counselors come down on the Seventh Day Adventist and I had told him I was baptized and I had told him I was baptized by the Seventh Day Adventist.

I would like to continue the faith. He told me all right. He put me down on the list himself.

Q How long have you been in that program?

A About two and a half months.

Q Where does it meet?

A Meets on the eighth floor.

Q Is there also a choir program?

A Yes.

Q Are you involved in that?

A Yes.

Q When does that meet?

A That meets when they get ready to call us.

Q Can you approximate --

A That's off and on. It's whether the gym teach feels in a good mood today. If he doesn't feel in a good mood, then we lose out.

MR. FRIEDMAN: Objection.

THE COURT: Sustained.

Q How many people participate in that program?

A Five.

Q How did you find out about that?

A Well, two of the people that sing on the floor and we was singing songs up there, they asked me if I want to sing. I told them yes. They had gotten my name.

Q You're in the drama program?

A Yes.

Q When does that meet, could you explain that?

A On Sunday afternoon during lockout.

Q What is that program?

A 18 people. It's teaching us dramatics on plays and so forth, the way of expressing ourselves.

Q How did you find out about that?

A Again, people leaving off the tier going to the program. I inquired where they were going.

Q Where does it meet?

A It meets -- alternates sometimes on the eighth floor, sometimes on the seventh floor.

Q Is there a general program for the Queens House of Detention?

A No, not that I know of. In being on the seventh floor, all the programs come up there. There's nothing when they come in, general program that they can be told because most of the people are not told about the program that exists.

MR. FRIEDMAN: Objection.

THE COURT: Sustained.

Q From your personal observations on the seventh floor, how many people would you say are involved in the programs?

A Less than a hundred people.

Q Now, during the evening lockout period what do you do?

A I come out at 6:00 o'clock, listen to the news. Again, I leave, may make a phone call and basically, you can't do nothing but stand around.

Q Have you observed fights on the floor?

A I've seen the outcomes of them, of the people that were fighting.

Q Do you sleep more or less -- strike that.

In the Queens House ot Detention, do you sleep more than when you were on the outside?

A A lot more.

Q When do you sleep more, during what times do you sleep?

A Every time the gate is closed.

Q What do you mean, every time the gate is closed?

A When it closes in the afternoon, I go to sleep.

Q Are you talking about during the lock-in time?

A All lock-in times I usually fall off asleep. If I don't start reading, mostly.

Q Why?

A Because there basically is nothing to do and from nothing to do you get tired from trying to think of something to do.

MR. MUSHLIN: No further questions.

(Continued on next page.)

fols.

CROSS-EXAMINATION

BY MR. FRIEDMAN: (Cont.)

Q Good morning.

A Good morning, how do you do.

Q When you came into the Queens House of Detention, were you wearing the clothes you are wearing today?

A Yes, I was. All except for the coat.

Q Where did you get the coat?

A I brought in jail with me.

Q What do you mean, you carried it with you while not wearing it?

A You said when we met.

Q I'm sorry; when you first were incarcerated three months ago, is that right, at the Queens House of Detention, were you wearing the same clothes that you are wearing today?

A Yes.

Q Have you clearned those clothes at all in the three months?

A Yes. All except for the pants.

Q How did you do that?

A When I take a shower, I wash the underwear. When I wash the shirt, maybe every three days and it will dry in

the morning. I have to hang it out on the gate, outside the cell and dry it. It will dry by the morning.

Q Did you receive any visitors at the Queens House of Detention?

A I received three since I've been there.

Q Are you allowed at that time to give your clothes to the person visiting you and receive clothes in exchange?

A Yes. But there's a problem there.

Q I'm asking you what the rules are.

A Yes, yes, you are allowed to.

Q So, as you have cleanred your clothes, when you testified that there's no vehicle at all to clean clothers, you mean it's hard to clean clothes but it is possible; is that correct?

A Anything is possible.

Q It's not only possible but you in fact do it.

A Everybody does it.

Q You do it?

A What I'm saying --

Q I'm just asking you, do you do it?

THE COURT: Just answer the question.

Q Do you clean your clothes?

A Yes, I do.

Q Have you ever been involved in a fight at the Queens House of Detention, yourself?

A Not as of yet, no.

Q So when you say people fight harder in their cells than in their tiers, this is just speculation on your part; is that not correct?

A No.

Q You can't see in the other cell, can you, when you're in your cell?

A No, I can't.

Q That's all I ask, can you see another cell.

You testified that you pretty much sleep when you're locked in, I guess that's except when you eat your meals?

A Or reading.

Q How many hours a day do you read?

A There's no clock in there. I can't really say.

Q Estimate.

A Estimate of when I feel like reading, I may read an hour, I may read two hours.

Q On the average would you say you read an hour a day, two hours?

A An hour and a half.

Q You read every day?

A Mostly, most of the time.

Q How long does it take you to eat your three meals?

A How long? That's a rush thing. It may take fifteen minutes.

Q For each meal?

A Yes.

Q So it's a total of 45 minutes for three meals?

A Yes.

Q So, for an hour and a half you're eating, and for 45 minutes, you're eating -- excuse me, 45 minutes you're reading and an hour and a half your'e eating, the rest of the time you're locked in, you're asleep?

A If I'm not reading.

Q Are you locked in your cell sixteen hours, approximately sixteen hours a day?

A I'm locked in every time I come up.

Q Is it your testimony you sleep approximately 13 hours a day at the Queens House of Detention?

A I sleep approximately -- if I'm not reading, yes.

Q Thirteen hours a day. You stated, I think, that

the first time you were convicted you were convicted of arson?

A No, I said petty larceny.

Q What else have you been convicted of?

A Convicted of Grand Larceny which was a robbery 1 assault, and convicted of another felony which was given three years, given three years.

Q Burglary?

A Yes.

Q Were you convicted of any other crimes?

A Convicted of a misconduct which I received ten days for in the Brooklyn House of Detention, 1961.

Q You stated that when you received your food on a tray, you put something on your lap, a pillow or book?

A A pillow.

Q Between your lap and the food,and you stated that this is not because the tray is hot; is that correct?

A A Yes.

Q Were you here -- you weren't here yesterday but if I were to tell you that Mr. SMith testified that he went trhough a process similar to yours and that the reason he put a pillow on his lap was because the tray was too hot, would that cause you to change your testimony about the temperature of the tray when you received it?

A No, it wouldn't. He was on a different floor than me.

Q Now, you say you heard about the Cultural Ethical Program from a social worker; is that correct?

A No, I didn't. I said from inmates going up there.

Q Is there a social worker in the institution?

A Yes, there is.

Q Did you have occasion to visit the social worker?

A Yes, I did.

Q What is the name of that social worker?

A The first one was named Summerfield and the second one was named Miss Debousier.

Q Let me ask you this:

Isn't it true Miss Summerfield was the one who told you about the Cultural Ethical Program?

A No.

Q It's not.

THE COURT: Ethical Culture Society Program.

MR. FRIEDMAN: I'm not sure of the official society.

THE WITNESS: Ethical Cultural Society.

Q Do you remember that on January 16th, 1974 at

2:10 inthe afternoon we engaged in an examination before trial at the Queens House of Detention?

A Yes.

Q I'll now read to you a list of questions that were propounded to you at that time and answers and ask you if, in fact, they were propounded:

"Question: How did you hear about the Cultural Ethical Program?

"Answer: I was going back and forth from the counsel about my case. I happened to see some people sitting at a table. I inquired what it was. They explained it to me."

It was people at this -- up on the floor who explained it to you and not people on your floor; is that correct?

A It was Miss Summerfield.

Q What?

A It was Miss Summerfield and the conglomeration of people on the floor.

Q It was?

A Yes, it was.

Q You learned about this program through this counsel. Why were you going to this counsel?

A I was going there for personal business in

the street, that had to be taken care of while I was incarcerated.

Q How did you know there was such a counselor to take care of this for you?

A Again, by asking the police who would do such and so.

Q What do you mean the police, the Correction Officer?

A Yes, the police.

Q As opposed to a policeman on the street, a policeman on your floor, Correction Officer?

A Right. He told me to ask the aide and in turn the aide informed me about the social worker. I had him call up to try to get me an interview.

Q Did you get an interview?

A Yes, then it was easy. Now, it's --

Q Let me ask you this: How long did it take from the time he called up until you received your interview?

A When I first came there, I got it immediately.

Q Immediately?

A Yes.

Q How often did you visit Miss Summerfield?

A For about a week, a week and a half.

Q Every day?

Q Not every day, for about a week, a week and a half.

Q Did you see her almost every day for a week and a half?

A Almost.

Q Was she of an aid to you when you saw her, was he of help to you?

A Some.

Q Now, when you were up there and she was telling you about the Cultural Ethical Society Program and you inquired of people who were there, did anybody stop you from going to Miss Summerfield to those people in the Cultural Ethical Society?

A Yes.

Q But you were successful in talking to these people despite efforts to stop you from so doing; is that correct?

A Yes.

Q After a week and a half, did you see Miss Summerfield anymore?

A Not for a while. Then I had put in another slip. Then I had seen her.

Q Then you saw her again after you put in another slip?

A Yes.

Q Did there come a time you also saw a counselor named Miss Debousio?

A I was referred to Mrs. DeBousio when I had put the slip in. Miss Summerfield had three people she was tending to at the time. She referred me to Miss DeBousio then.

Q Miss DeBousio saw you at that time?

A Yes, she did.

Q How many times have you seen her subsequent to that?

A I see her every day. I'm up on the seventh floor.

Q Has she been a help to you?

A Yes, she has.

Q Now, is it not true that due to the fact that you're a worker on the library, you get a chance to go to the library every day -- excuse me, a worker on the paper, you get a change to go to the library every day?

A Yes.

Q Is it your testimony that one week after you put in an interview slip to go to the Ethical Cultural society Program you did go and were -- become a member of that program?

A Yes, it was. Not one week, but it was -- took about one or two weeks that I know of.

Q Now, I think you mentioned that you had spoken to Miss DeBousio about the possibility of her coordinating some college program for you while you were in the institution.

Are you in fact now enrolled in a college program in which you sought to be enrolled?

A Yes.

Q Was this with Miss DeBousio's help?

A Yes, it was.

Q It was also through her help that you became involved with the newspaper; is that correct?

A Yes. It was.

Q Now, how often -- I know you said it's sporadic, -- does it require meeting, approximately how often, how many days per week do you get to go with people?

A It's not days, it's day.

Q One day?

A Yes.

Q Is that during the service of the Seventh Day Adventist?

A No, it's not. It's during the middle of the week. It's on a Wednesday. If he feels like calling us up

for whatever reason he has.

Q Right.

Does this choir perform or sing any songs during the Seventh Day Adventist Service?

A Yes, it does.

Q So then there are two days with the choir; one is practice or rehearsal, one is to actually perform during the services?

A That's what the practice is for. There's only one day that you're given to practice, the day that you sing is not practice.

Q But you sing two days with the choir, two days a week; is that right?

A Yes.

Q You have stated that you're in the dramatics class. Have you ever participated in putting on a play?

A In Kew Gardens or somewhere else?

Q In the Queens House of Detention?

A No.

Q Any plans, of your knowledge, to put on a play?

A Yes, there is.

Q When is that supposed to take place?

A When we get through rehearsing for it.

Q How long have you been rehearsing for it?

A Now? This specific play; two weeks.

Q How many inmates are there who rehearse for this play?

A Eighteen.

Q For whom are you going to plan to put on this play?

A For the inmates.

Q The other inmates?

A Yes.

Q You testified that you work on the paper. How often does the inmate newspaper come out?

A Once a month.

Q To whom is this distributed?

A To the inmates.

Q One copy per inmate?

A Yes, there is.

MR. FRIEDMAN: May I have this marked for identification.

THE CLERK: Document marked Defendant's A for identification.

xx (so marked.)

BY MR. FRIEDMAN;

Q I show you the document marked Defendant Exhibit A (handing to witness). I ask you if you can

identify this for the Court.

A This is the December issue of the paper.

Q You are a help in preparing that paper?

A Yes, I was.

Q Now, in this paper did the inmates take it upon themselves to inform other inmates of programs that were available at the Queens House of Detention for Men?

A Yes, they did.

Q Is that contained on pages -- I guess, 11 and unnumbered, but I imagine it would be 12, of this paper?

A Right.

Q There was at least -- how many copies of this paper did you print, do you know?

A About 400. I don't know the exact number.

MR. FRIEDMAN: Your Honor, I move this be entered as Defendant' Exhibit A.

THE COURT: Let it be marked.

THE CLERK: So marked.

(So marked in evidence.)

BY MR. FRIEDMAN:

Q You've been to the library every day? You have a chance to go to the library every day due to the fact that you work on a paper?

A During lockout.

Q At the far end of the library, at the entrance to the room in which the library is housed, as you walk into your right, is there not a huge sign which informs the inmates of some of the programs available at the Queens House of Detention?

A That was recently put up, yes.

Q Isn't there also on that sign, stapled to it extracts of the pages we referred to, 11 and 12, which also inform the inmates of the programs available at the Queens House of Detention?

A Again, that was recently put up.

Q It couldn't be put up before December?

A Right.

Q Just to try to summarize; you get to work on the paper five days a week and therefore leave your floor five days a week on that project; correct?

A Yes.

Q The Ethical Cultural Program meets two days a week. Also you leave the floor two days a week for that.

A Well, actually, you say I leave the floor five days a week. All of us are on the seventh floor.

Q You're housed on the fourth floor?

A Yes, by going to the seventh floor, I go there.

Q You go to the Ethical Culture Society Program

two days a week?

A Yes.

Q You go to the Seventh Day Adventist activities once a week; is that correct?

A Yes.

Q You practice for the choir sporadically but usually once a week?

A Sometimes, not always. Usually.

Q Is there any reason you can think of why you would have been singled out for special treatment by the guards, the Correction Officers at the Queens House of Detention for Men?

A How do you mean special?

MR. MUSHLIN: Objection.

THE COURT: Sustained.

You can ask why he knows he's in more programs than other people.

Q You've been in the institution for a mere three months, involved in all these programs; is that correct?

MR. MUSHLIN: Objection.

THE COURT: Overruled. He may answer.

A Yes.

MR. FRIEDMAN: No further questions.

THE COURT: Anything more of Mr. Bruner?

REDIRECT EXAMINATION

BY MR. MUSHLIN:

Q Who is the editor and publisher of the newspaper introduced in evidence?

A Ray Jones.

Q Is the newspaper in error when it says the editor and publisher is Rubin?

A That's for name sake.

Q Can you put anything that you like in this newpaper or is it censored?

A No, you can't put anything that you like. You can put anything that agrees with Warden Rubin.

MR. FRIEDMAN: Objection, your Honor. We will stipulate that the newspaper is censored.

Q You testified when you're locked in your cell, you can't see from one cell to the other?

A No.

Q Can you hear?

A Yes, you can.

MR. MUSHLIN: No further questions.

MR. FRIEDMAN: No further questions.

THE COURT: You can step down.

THE WITNESS: May I say something?

THE COURT: All right.

THE WITNESS: All those programs that exist in the House of Queens now, right? The majority do not have -- the majority cannot get in them. They do not have the facilities to hold them. That's why it's broken down to 20 and that 20 is put on the same day list so when you say 20, you're not saying 40 people, you're saying 20 people.

THE COURT: All right.

(Witness excused.)

THE COURT: Anything more?

MR. HERMAN: We have nothing further this morning. We have one witness who had to go to State Court. He won't take long. I imagine we can put him on after Dr. Kinzel.

THE COURT: When will Dr. Kinzel be here?

MR. HERMAN: Tomorrow afternoon.

THE COURT: You mean you have nothing more today?

MR. HERMAN: This morning, Mr. Goff is here.

THE COURT: 2:00 o'clock.

MR. HERMAN: Fine.

THE COURT: We'll resume at 2:00 o'clock.

(Luncheon recess at 1:00 o'clock p.m.)

A F T E R N O O N S E S S I O N

THE CLERK: Four-page document marked Plaintiff's Exhibit 3 for identification.

(So marked.)

THE COURT: Mr. Mushlin, are you going to examine the next witness?

MR. MUSHLIN: Mr. Donald Goff to the stand.

THE CLERK: Your full name.

THE WITNESS: Donald H. Goff.

D O N A L D H. G O F F , was called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MUSHLIN:

Q Mr. Goff, what is your present occupation?

A My present position is directing a National Prison Project for the United States Commission on Civil Rights.

Q What do you do; what are your duties in that position?

A My duties are to develop a project, a National Prison Project for the entire Commission with the principal

thrust upon developing a national report focusing upon statutory rights of prisoners.

Q You have prepared a biographical sketch of your professional training and experience, have you not?

A Yes, sir.

Q Is this that sketch (handing)?

A Yes, sir.

Q Mr. Goff, is that document an accurate record of your experience and training?

A Yes, sir.

MR. MUSHLIN: Your Honor, I will offer in evidence --

THE COURT: Any objection?

MR. FRIEDMAN: No.

THE COURT: Let it be marked and let me look at it briefly.

THE CLERK: Plaintiff's Exhibit 3 marked in evidence.

(So marked.)

MR. MUSHLIN: Your Honor, we're prepared to stand on the biographical sketch. I would, in the interest of time, I would like to ask one or two brief questions.

THE COURT: Yes.

BY MR. MUSHLIN:

Q Mr. Goff, how long have you been involved in Correction work?

A I started in criminal justice in 1948. I moved into correctional work, per se, I believe around 1951 or 1952. I became -- I was the Chief of the Bureau of Correction in New Jersey. I believe it was 1955.

Q What were your duties in that position?

A That was the operational aspect of the State Correctional Institutions together with Juvenile Training Schools, and in addition, the State inspection responsibility for County jails and Municipal lockups.

MR: MUSHLIN: Your Honor, at this time we respectfully move Mr. Goff be qualified as an expert in the field of corrections.

THE COURT: Do you want any voir dire?

MR. TOBIAS: No.

THE COURT: You can recognize him.

BY MR. MUSHLIN:

Q Mr. Goff, have you ever visited the Queens House of Detention and the Brooklyn House of Detenion?

A Yes, sir.

Q When was your most recent visit?

A Last Sunday, to both of the institutions.

Q On your visit, briefly, what areas of the institutions did you observe?

A Principally the housing areas of both institutions.

Q Did you observe the cells in which men are housed?

A The cells, the dayrooms, the lockout area.

Q Did you have occasion to observe the furnishings in the cells?

A Furnishing in the cells, furnishing in the lockout areas, furnishings in the dayroom, the dormatory housing, the suicide potentials, the methadone wing, those areas.

Q Were you informed of the daily routine at the institution?

A Yes, I was.

Q Now, Mr. Goff, based on your experience and on your observations at those institutions, in your professional judgment, how many people are the cells that you observed, adequate to hold?

A One.

Q Now, is it a good correctional practice to house two people in those cells?

A No, sir.

Q Now, Mr. Goffm, are there published standards in the field of correction to support that opinion?

MR. TOBIAS: Objection, your Honor.

THE COURT: Overruled.

A Yes, there are.

The standards promulgated by the United Nationa, the standards promulgated by the American Correctional Association and in general penalogical knowhow, so to speak.

MR. MUSHLIN: I would like to mark this document for identification.

THE CLERK: Book headed, "Manual of Correctional Standards," marked Plaintiff's Exhibit 4 for identification.

(So marked.)

MR. MUSHLIN: And this document'

THE CLERK: Document marked Plaintiff's Exhibit 5 for identification.

(So marked.)

BY MR. MUSHLIN:

Q Mr. Goff, I show you what has been marked for identification as Plaintiff's Exhibits 4 and 5 (handing).

I ask you if you can identify those documents. Would you start with the one numbered for your convenience, please.

A "Manual of Correctional Standards" issued by the American Correctional Association, 7th printing, 1972.

Q Are those the standards that you were referring to?

A Yes, sir. This is one set.

Q Would you direct your attention to Exhibit 5, marked for identification. I ask you if you can identify that?

A Yes. Here is the section. As a matter of fact, it's relating to housing in the United Nations Standards.

THE COURT: You asked to identify. Let's go one step at a time.

Q Would you identify this?

A This is the English version of the United Nations Standards.

Q Did you participate in the promulgation of those standards, the drafting of those standards?

A Yes, sir. These standards were promulgated at the 1955 Geneva Convention, Geneva Congress on the Prevention of Mistreatment and Treatment of Offenders. It was adopted by the General Assembly. I b-lieve it was in 1957 or 1958. Reviewed again in London at the 1966 meeting. Reviewed, readopted in 1965 in Stockholm and again readopted in 1970 in Kyoto, Japan.

I should say, however, that at the Kyoto, Japan meeting, a subcommittee has been created to consider possible revisions in these standards. Said subcommittee has met once here in the United States. It is chaired by Mr. Paul Corneil, former Minister of Justice of Belgium and I've been a consultant to this particular committee with regard to the revision of the minimum standards.

MR. MUSHLIN: At this time I would offer in evidence the two standards that have been identified, the two documents identified by the witness.

MR. FRIEDMAN: Your Honor, we have no objection to the entrance of this document into evidence so far as only the part that is relevant to this case.

THE COURT: Yes.

MR. MUSHLIN: We'll so stipulate.

THE COURT: That is Exhibit 4. That will be marked.

THE CLERK: So marked.

(So marked. Exhibit NO. 4, in evidence.)

THE COURT: Does that apply to Exhibit 5 also, the United Nations material?

MR. FRIEDMAN: Yes.

THE COURT: It will be received.

THE CLERK: Exhibit 5 marked in evidence.

xx

(So marked.)

BY MR. MUSHLIN:

Q Referring to those standards, did you testify that -- withdrawn.

What were those standards saying about one man in a cell, size of the cell that you observed on your tour?

A The standards call for one man to a cell and the ACA standards are calling for cells of 50 square foot for each individual.

Q Mr. Goff, in your professional opinion, why are the cells that you observed not adequate for two men?

A The cells of both, in both Brooklyn and in Queens were built to or as close to the standards as possible when they were built. They were designed as one-man cells and the facilities, in addition to the size of the cell also were designed for one man in each cell.

I am referring, sir, to the ancilliary aspects that are involved in all housing; namely the number of urinals, toilets, showers and I believe if an examination is made of both Brooklyn and of Queens, the ancilliary facilities meet the standards of one man per cell for each one of the tiers.

For example, each one of the tiers, there are

fifteen cells to a tier, with one shower at the end of the tier. This is the standard for housing. In other words, one shower for every fifteen individuals. The standard for toilet facilities is one toilet for every eight individuals. So that when both Brooklyn and Queens were built, they were built based upon one man for each one of those cells.

Q What effect -- just to step back for a minute, if I may. In your opinion, in light of contemporary standards, are these cells adequate for one man?

MR. FRIEDMAN: Objection, your Honor. The expert witness is being asked to give his opinion on matters which are for the ultimate determination of the Court, whether these cells are adequate or constitutionally inadequate.

The expert would be allowed to state the standards. The Court would determine the adequacy of the facility.

THE COURT: I think experts often say what they think the Court should decide and the Court has to decide for itself. I'll overrule the objection.

(Question read back.)

A I must give a yes and no to that. Yes, they are adequate in one sense. No, they are not adequate if one

takes the new standard which is being promulgated or being urged by the National Advisory Commission on Standards and Goals. I know that point very specifically because in the minimum standards, the minimum civil and human rights for prisoners which is being used as a baseline for this national project, I am calling for 50 square foot for individuals based upon old standards.

I have been called down on this point by members of the National Advisory Commission who are calling for an increase in the square footage. So, I must give that kind of an answer to your question.

Q What increase is being contemplated, what increase in square footage?

A To 80 square foot per individual.

Q In your opinion, what is the effect on the individual detainee of applying another person to the cell?

MR. FRIEDMAN: Objection. The man has not been qualified as an expert in psychology or effect on another human being.

THE COURT: You can't fractionalize expertise that much. I am going to receive it and judge its weight myself. Overruled.

A My answer is not as a psychologist. My answer is as a correctional individual. From a correctional point

of view, it is highly undesirable to have two individuals celled together. This is under any circumstance, let alone in the very, very, very small confines of about a 50 square foot cell.

It is undesirable even if you have a 100 foot or 200 foot cell. It is undesirable principally from a correctional point of view because it tends to increase sodomy, tends to increase aggression. You have only two individuals interacting and you will have a power play in operation of personalities and individuals.

If you could select your cellmate, it might be another question, however, you do not select your cellmate, so, therefore, there will be a competition. You have problems. It is much more desirable to have three men than it is to have two men in a confined area.

THE COURT: That's why Admiral Berg went alone, as I recall. He couldn't have three and two wouldn't get along.

Q What effect does confining two men in these cells have on the security of the institution?

A There is a very intangible effect of having individuals in close proximity, one to another. I euphemistically call it human compression.

Real minor things begin to grate on one's

nerves. One threshhold when they are being held in detention is generally relatively low to begin with. You add on real minor irritations, doubledeck beds for example. If you happen to have the bottom bunk, the guy when he gets up to his bunk is going to step on your bed. It's a very minor thing but it is an irritation and can be an irritant.

Being held in close confinement with another individual increases tension, frustrations and problems and correctional people are not a bunch of do-gooders. They are very pragmatic. One of the reasons why we have this emphasis upon one man to a cell and not having individuals in a very tight situation is to reduce problems of administrators.

You reduce your tensions, reduce the administrative problems, reduce the fights, sodomy, the anxieties simply by this technique. It is a way of reducing and calming down a population which is normally under pressure anyway.

THE WITNESS: It's really pragmatic, your Honor, as to why we want this kind of thing. There are other factos that enter into it. There's the whole factor of privacy and the need of an individual for privacy. There's a whole concern about private property. If you get two guys in a cell, two men in a cell, you'll have fights, you'll have problems

over private property. Whose is which. This kind of thing. From a real practical operational point of view, it is not desirable. You shy awy from it as much as possible.

BY MR. MUSHLIN:

Q Mr. Goff, along that line, are you familiar with the housing practices of the New York State Department of Correction in their institutions?

A Yes, sir.

Q What are their practices?

A One man to a cell. I believe the New York State cells would possibly -- Attica cells, I know are larger. Greenhaven cells I know are larger. I believe that possibly Auburn may be of the smaller type than they are to the extent down here. I'm not too sure of the size. I know the policy is one man to a cell.

Q Turning your attention, if I may, to the areas without the cells, the lockout corridors in the day, if you will. Having observed those areas, in your professional opinion, are they adequate to the number of inmates that must share them?

A No, sir. Again, we must go back to the fact that the physical plans were built for a particular maximum population. Corridor space, dayroom space, all of these are

predicated upon a particular population. When you increase that basic housing population, you are cutting into and reducing the area per square foot that was originally figured out for corridors, lockout corridors, for dayrooms, Your immediately overloading the sanitary facilities, so this cannot be looked at just from the point of view of a number of beds.

This has to be looked at from a total point of view.

Q How does this affect the individual detainee?

A You have the same problem of human compression here. Corridors and lockout corridors that were built for fifteen men now house 25 or 30.

There is another compounding factor that is thrown into this particular complex problem. When both Brooklyn and Queens were erected, they were built, predicated upon a particular detention average stay. If I'm not mistaken, Brooklyn was opened when Anna Krauss was Commissioner. I believe it was opened in 1956. I believe that Queens was opened in 1961.

It had to be in that particular time because we had an American Correctional Association Mid-Winter Meeting in February of either '61 or '62 in New York State and Commissioner Krauss, the then Commissioner, had the Board of Directors and the members of the ACA over to Queens

to show this facility to the individuals from all over the United States that were attending this.

At that particular time, when the planning was made the length of stay in detention was much less than the length of stay in detention now.

I say that predicated upon the number of court decisions that have entered into allow pleas in a number of different areas which were not in existence when plans were being developed by Hopkins, who was the architect of Brooklyn and plans were being developed for Queens.

In other words, the physical layout and the construction of those facilities were constructed, based upon a population flow which is not in existence now. It was before all of the decisions and all of the needs to certify the motions which they were not in existence in those days.

I believe you will find -- I'm estimating this -- that the facilities were built for an average stay for the total population, which means the in and outers as well as the long-termers for about 21 days. So that that is another factor that enters into the total picture.

Possibly, if there had been a projection of the extension of the length of stay, then the corridors would have been increased, the dayrooms would have been increased

and the program at particular areas definitely would have been increased because both of those institutions have very, very small programs at particular areas.

It's been necessary to convert some of the areas, one into housing. I believe in Queens, if I'm not mistaken,the congregating dining room has been knocked out to get additional space to take care of this extension in the length of time that individuals are in detenion.

Q Speaking of the dining area, Mr. Goff, do you know where detainees are fed --

A Fed in their cells.

Q Is this an acceptable correctional practice?

A No, sir, it is not. It is the least desirable way of feeding.

Q Could you tell us why you say that?

A Again, a series of reasons. One of them is that you want as much movement and as much change of scenery for a population as you can possibly get. So that even having inmates, particularly detention inmates in a very confined physical building, even having inmates move from their cell to a mass dining room is a change of scene.

It's something to do. It's activity. That's one reason.

Secondly, in addition to that, you also have sanitary problems. Namely, food. If you feed in the cells,

food can be spilled. Very often it is spilled. It gets into blankets. It gets on clothing. You have a sanitary problem which means you have an extermination problem escalating.

Thirdly, from the esthetic point of view and human dignity point of view, you don't want individuals eating in the same place that they sleep, that they deficate, that they do everything. From a human dignity and esthetic point of view, so there are a series of reasons why you want these inmates moving and again, this is not for "do-gooderism." This is real practical correction. YOu want to cut down that tension as much as possible.

There is tension inherent in anybody that's lost their freedom. Each one of those little minor things continually adds another drop, another drop, another drop and you increase anxieties, frustrations and you precipitate, set the background for fights.

You set the background for sodomy. In other words, every effort has to be made to hold down anxieties, tensions, to keep movement, something knew, something different.

Q Based on your observations, where would it be preferable to feed the detainees at Brooklyn and Queens?

A Where it was originally, in a congregat[illegible]

dining room. Next, then I would go in terms of physical operation, to where I believe they were feeding prior to the riots, namely in the dayrooms. Anything to get movement. Something which is a little bit more dignified, something which is a little more human.

Q You observed the furnishings in the cells and could you tell us how many chairs there were, areas to sit down aside from the beds?

A Gee, I don't recall. I believe -- I don't know if there was one chair in there or not. I know that there's a small writing ledge. A hopper. I honestly can't say for sure.

Q Assume, if you will, that they hypothetical cell had only a cell with an area, one seat to sit down in and the other area to sit down would be the bed. What effect would this have on two people in that area simultaneously with only one table and one chair?

A Most inmates generally like to sit on their beds anyway. That's been my experience. I don't know as it would have any major effect other than the fact that you've got two individuals so completely compressed that you can't move without touching another person.

Q Do you know what the practice is in New York State Penal Institutions with regard to serving food to

inmates?

A It's congregate feeding. There is one exception to the congregate feeding. The exception to the congregate feeding will be the administrative segregation group who will be fed in the cells. The Attica group, for example, are all fed in their cells.

Q Turning, if we can to the problem of lockin, is it in your view an acceptable correctional practice to lock detainees, in the general population, in their cells from 15 and a half to 17 and a half hours each day?

A No, sir.

Q Why or why not?

A We again come back to the question in terms of adminstration. Individuals who are locked for that length of time -- let me put it this way. Yes, you can lock an individual for that length of time for a week, for two weeks. When you get anything beyond that period, then you start compounding and creating problems for your operation.

You create security problems, for one thing. Security is three things: Security is program, which is activity. Physical plant and people. You've got to have all of these. Programming being activity, movement, a great deal of it. Activity that runs from, you know, 7:00 o'clock in the morning until 9:00 o'clock at night where the

individual is continually on the go, doing something. That's activity. Being locked 15 and a half, 17 hours a day is not activity. You can fill in open spaces with something to do but it's really not activity. It still cannot compensate for extensive periods of lockin.

Q What effect does all this have on the security of the institution.

A It weakens it.

Q To examine a little more closely, what effect does it have on the individual if these lockin times that we have been discussing occur during the daylight hours? What effect would that have?

A A lot of jails will lock men out all during the daylight hours so that they do not have their daylight routine disrupted. I would strongly expect that if I were locked in either Brooklyn or Queens, that what would happen to me is that after a very short period of time, maybe a day or two days, that I would start, one, to be sacking for an hour -- let's see, they're locked from 11:00 to 1:00.

I would strongly suspect and I saw this myself, that I would be sleeping for an hour, possibly between 11:00 and 1:00. Then, I strongly suspect that I would be sleeping for an hour or two hours between 3:00 and 6:00.

Q What's wrong with that?

A Then I strongly suspect when it came time for me to sleep at night, I wouldn't sleep all night which means I would be restless, awake, God knows what I'd be doing. If I had a cellmate, I don't know what I'd be doing. In other words, routine is broken down. It's disruptive.

Q Is this necessary practice for the security of the institution?

A I don't know. I think I'd probably much prefer to see individuals locked out allthe time during daylight hours than I would this sporadic lockin.

Q Hypothetically, Mr. Goff, assume that during these lockout periods that we have been discussing, 11:00 to 1:00 and 3:00 to 6:00, between the lockout periods, programs of education or cultural nature were offered to some numbers of inmates.

Would that make an appreciable difference in your evaluation of whether or not the lockin hours are too restrictive?

A No, I think they're unrelated. Youre talking about activity programs in operation when the men are not locked in but you're talking about what?

Q I'm talking about --

A Three hours in the morning?

Q Yes, sir.

A And two hours in the afternoon?

Q Yes, sir.

A I think it's commendable and there should be activity programs. There should be and I think the department here has done a great deal in terms of developing activity programs.

This, however, does not in my estimation balance extensive lockin period or double-celling. In other words, activity programs is something to be desired. It's something to be desired and should be in all institutions. They do not compensate, however, for other situations. They can't compensate because if it's being postulated by having a marked increase in activities from 8:00 until 11:00 and from 1:00 until 3:00, that this compensates for the human compression, the logical conclusion that I would draw from that is that we increase the activity, but instead of two to a cell, I'll put four to a cell and this,because I have increased the activities over what is going on now, I've been able to compensate and take care of the additional overcrowding.

I don't know whether I'm making myself clear on that point or not.

Q Turning now to the practice of denying a person access to his cell during the lockout period, in your opinion, is this an acceptable correctional practice?

A Denying them access?

Yes, sir.

A I would rather see the inmate locked out from 8:00 o'clock in the morning until 7:00 o'clock at night rather than locking them in periodically. If, however, there is going to be periodic locks and periodic out periods, I believe, -- as a matter of fact, I think two things are going on statement in here: I believe one of the institutions locks everybody out at lockout time --

MR. FRIEDMAN: I object to this answer as totally not responsive to the question.

THE COURT: It's the thing I was hoping we're getting at. Let's take this as the assumption. That in Brooklyn, when they are out of the cells, when the cell doors have been opened, they can be in the corridors or go back to their cells.

In Queens, they're locked out of the cells so that they can't go back in. Is the difference merely a matter of administrative choice or is there some correctional advantage in one as distinguished from the other.

THE WITNESS: There's such a small area that the men in both Queens and Brooklyn are confined to that it would be desirable if the cell doors were left

open.

THE COURT: Would it creat increased security problems if they go back in he cells and get in fights?

THE WITNESS: There's no question in my mind.

THE COURT: Or steals somebody's papers?

THE WITNESS: It very definitely would. It permits strong inmates to strongarm others into cells. It permits all kinds of possibilities.

However, sir, this can be compensated for and probably should be compensated for by personal --

THE COURT: In other words, if you're going to have the cells open during the time when the men can be outside of the cells, you have to have more supervision?

THE WITNESS: Yes, sir, that's the basic point.

What can happen is that lack of program and lack of personnel for whatever reason it may be, pushes more and more and more reliance upon physical plan which is the bar setup. Lack of activity, lack of personnel then increases the emphasis that's placed upon physical plants and increases the time that individuals are celled.

You rely upon physical security rather than the

security that comes with activity and observation.

DIRECT EXAMINATION

BY MR. MUSHLIN: (Cont.)

Q On that question, Mr. Goff, did you notice that on the floors at both Brooklyn and Queens House, the housing floors are sealed, if you will, in four quadrants?

A Yes, sir.

Q Inmates from one quadrant are not allowed to go to another quadrant. In your opinion, is this an acceptable or necessary correctional practice?

A I think if I were running this facility with two officers in the center, I think I would adhere to that particular practice. It is an undesirable practice but under the circumstances of terms of personnel, I would not want to see freedom of movement of inmates through that bridge area with only two officers in that particular area.

It can be done very readily simply by an increase in officer personnel. It can also be done but it becomes slightly more difficult in terms of administration by a pass-type system. You do not want masses of inmates in that center, in the bridge area.

This is the control of that floor.

Q If I may, let's assume another hypothetical. Assume you opened the dayrooms on the A & C side and B&D side,

you can allow inmates access from one side to the other without passign through that bridge area?

A Yes, but you're only talking about one institution. You're talking about Queens. Queens, the dayrooms are two tiers on the same level feed into the same dayroom.

Q That's correct.

A That cannot be done in Brooklyn.

Q Right.

A Yes, in Queens, sure.

Q Could we discuss that for a moment and the Queens situation? Would that be a desirable practice?

A It would give more activity. More movement. It will, however, again, increase the possibiltiy of inmate problems unless you have observation but again this is a question of observation and personnel.

Q Assuming that you had the personnel to allow what we have just been discussing, both for Brooklyn and Queens, would that be desirable?

A I think it would be highly desirable. I would put a codicil into that, however, sir.

Q Yes?

A We had a form of classification so that we were able to make a distinction as to individuals who are being comingled.

Q Yes, you take me to my next question, Mr. Goff. That is, in your professional opinion, how would you characterize the Queens House of Detention and the Brooklyn House of Detention in terms of the level of security maintained, the level of confinement?

A You mean the institutions?

Q Yes, sir.

A They're both maximum security institutions.

Q In your professional opinion, is it necessary to house all pretrial detainees in a maximum security setting such as the one we have been discussing?

A No, sir.

Q In your opinion, sir, what percentage of detainees would require maximum security facilities such as the ones that we have had under discussion this afternoon?

A The ACA says 15 percent are maximum security. I would increase that possibly. I would say between 20 and 40 percent. Included in this, however, would be a classification process wherein every individual upon admission into the facility is put into a reception center, maximum security for classification purposes. Within a period of one week to ten days, then the individuals would be classified. Of those, after this classification period, I would say about 20 percent, 15 to 20 percent are maximum security.

Q Could you explain how you would determine when an individual, in a classification, which individuals require maximum security treatment and which individuals do not require that sort of restraint?

A You mean --

Q How would you classify --

A Here in New York City with the existing facilities and existing staff or how?

Q Well, let's take it from that point of view.

A The first premise that we have is that the individual is in there because he can't make bail. If he could make bail, he's going to be out. I'm going to be handling detention inmates differently than I would be handling sentenced. I have to start out with that assumption, with the assumption that these individuals if -- first of all they're not convicted. Secondly, if they could make bail they would be out on the street.

That's one assumption.

Secondly, I would -- as a matter of fact, the institutions are doing it without, I think, to some extent without realizing it. They are making a very rudimentary classification. They are doing a very rudimentary classification.

Q Explain what you mean.

A They are assigning individuals to maximum security. They are teasing out potential suicide risks. They are teasing out mental observation cases. They are teasing out detainees who volunteer to work . They are teasing out, I believe in that methadone program, they are teasing out and classifying individuals to work in the methadone wing, so that actually --

Q You mean not addicted individuals to work as help?

A Yes, the detention cases.

Q Yes?

A The officers are doing this principally by their past experience. Added to this, would be a system wherein when an individual comes in, as I understand it, the only information that the department receives is the equipment plus the yellow sheet. There is, however, available, which I -- as a matter of fact, I asked specifically whether they got the -- there is an ROR sheet which will give some additional information. There is also the psychiatric and social work screening that apparently is now being done to tease out suside risks.

I would combine that plus the observation of trained personnel officers who have been around in the reception center, in the reception unit to make it join with all of this information some rudimentary classification.

You can tease out individuals that you would not want to put on minimum security or medium security by gross criteria.

Does he have a warrant against him for another charge? There's a whole series of criteria that are either used by officers without realizing they are using it or that are actually spelled out as to how you classify. This is the most simple type of classification which is a security classification.

Q How long do you maintain detainees in the reception wing before that evaluation could be made?

A I would think it should be able to be made within a week or ten days after the individual arrives.

Q Observation of the individual would be part?

A Observation very definitely, of the officers. The officers are doing this now.

Q During the time that you would detain these individuals for observation, would they be in a maximum security setting?

A Very definitely.

Q Would the severity of the crime enter into the determination of classification?

A I would go back again to the fact that the severity of the crime will have nothing to do with whether

I'm in or out if I can get a bond. That's one thing.

Secondly, I want to know the history of the severity. The yellow sheet will give some indication of the history. I would be somewhat apprehensive about focusing a lot of attention upon severity of the offense because the only obligation and the only reason for detention at least as I understand it is to assure appearance in court.

The thing you're looking for here is the risk benefit factor in terms of escape. Severity of the crime may give -- may enter into it only in terms of what is the benefit to the inmate if he escapes. If he is facing a very heavy sentence, then he has much more to gain by attempting to escape. I would be much more concerned with that side of it.

Q With such a system that you have been discussing with us now, would that be feasible to establish in the institutions we have been discussing?

A I believe the department is attempting to set one up, is it not? Yes, sir. The answer is yes.

Q Now, would such a system improve the security of the institution?

A I think it would.

Q Would you explain why -- if I may go back for a second. What you're saying th at in such a system, not all

the people, in fact, the overwhelming majority would not be treated as maximum security?

A Yes.

Q Yet you say it would imprcve the security of the institution?

A Yes.

Q Would you explain why?

A Again, going back to the human compression, going back to anxieties, an individual who is held in maximum security when in his estimation he does not need to be held in maximum security, when the individual - = I don't know how to describe it, is treated in a fair way and not-- it's like group punishment. You don't punish a group for something that one individual memeber did.

You don't hold everybody in maximum security because there is need to hold some in maximum security. People who are held this way feel trodden upon, bitter, unhappy and most of the inmates that I have personal direct contact with know whether they are considered an escape risk and know whether they are an escape risk.

They know what the situation is. I think there would be a reduction in fights and reduction in the security problems.

Q What would this mean for the individual detainee?

A You mean -- I don't know what you are leading to.

Q What would it mean, just for the typical day, the life of an individual detainee who was a recipient of the benefits of the system that you've been discussing?

A Life would be a heck of a lot better. I don't think we'd end up with as embittered individuals later on. One of the concerns the State operations always have is the fact that the individual's first contact with correction and first contact with incarceration is on that detention level and if they develop a mind set or if they are -- I don't like to use the word mistreated, but if they are not treated fairly and if they are subsequently sentenced to State, then you get it on the State side because they come in with a chip. They are much less cooperative. You even get it in terms of how the guy is brought by the Sheriff. In other words, the transportation process enters into this.

It has an impact upon what happens when you receive them on the State level.

Q I see. Now, in your professional opinion, would it be feasible to establish such a system as we have been discussing without making physical alterations to the Brooklyn and Queens House of Detention?

A I think to some extent, yes, sir.

It would be basically a question of increasing the mobility and the area of operation of your medium or minimum security inmates. It might also be done -- there are a series of ways it can be done. There's so many ways it can be done. There's so many ways you can cut up a department. It can be done by institutions.

For example, all medium security institutions or medium security can be housed in one and hypothetically in Brooklyn. The Tombs could be held for maximum. Bronx and Queens could be held for minimum. Classifications not only inside the institution but it can be done by the institutions and should be done by institutions, so if you had maximum security institutions, medium institutions and minimum security institutions and the classification, the security catagory intended to an individual, why ideally would be correlated to the physical plant, the more important thing is the freedom of movement of the individual within that physical plant.

Q Under that system, would a person, say, who had been classified as a maximum security, would you have the opportunity,and under the system you've been discussing, to move to minimum security or medium security?

A You see, hopefully, I would like to see him out of detention before you get to that particular stage.

that would be possible, but again, if we look at detention as to what it should be, detention should be a relatively as short as possible period but you would be classifying and reclassifying is what it amounts to.

Q Even for the maximum security institution inmates, detainees, would so much lockout time as the time -- lock-in time, be necessary to keep them under maximum security restraint - was my question clear, sir?

A Yes. Attica is a maximum security facility. Attica inmates are sentenced. Attica inmates are not locked as long as inmates in this city are locked but it's a maximum security classification, the institution.

They have minimum and outdoor gangs and medium inside and medium inside there but the maximum fellows are inside but they are out, floating around the wing, floating to shops and what-have-you.

Q Just briefly, if we threw into the equation pretrial individuals, waiting for trial in New York City, even in that situation, as much lock-in time, how much lock-in time would you require?

A I don't think it would.

MR. MUSHLIN: May I have the Court's indulgence

THE COURT: Are you through?

MR. MUSHLIN: I would like to discuss with

my associate.

(Counsel confer.)

MR. MUSHLIN: No further questions.

CROSS-EXAMINATION

BY MR. TOBIAS:

Q Good afternoon, Mr. Goff. I understand that this past Sunday you visited both of the institutions in question; is that correct?

A Yes.

Q How long did you spend in each institution?

A Possibly an hour in each one of them.

Q An hour in each one?

A Yes, sir.

Q How many times have you visited each institution previously?

A This would be an estimate, sir. In the last -- I would estimate possibly ten to fifteen times in each one of the institutions.

Q Let's take them separately. How about the Queens first, how many times have you visited Queens?

A Eight, ten.

Q When was the last time you visited Queens prior to Sunday?

A Prior to Sunday, I would suspect it was in the

vicinity of a year ago.

Q How long a visit was that?

A Three hours, I believe.

Q Prior to that, when was the last time you visited in Queens?

A I can't tell you, sir.

Q Is it because it was so long ago?

MR. MUSHLIN: I'm going to object on the ground--

THE COURT: Overruled.

Q Sir, was it because it was so long ago you can't remember? Give me some approximate dates.

A I have been in these institutions sporadically on and off since 1958.

Q Yes, Mr. Goff. I'm asking you specifically. We've established you were there Sunday for an hour and you were there a year prior to that date for about three hours but before that, how long were you there and when?

A I cannot give you specific dates. I would expect within the previous six months. I would expect -- the records of the department should show that, sir, because I know everyone is logged in.

Q How about Brooklyn?

A Brooklyn, I would say the same thing.

Q When was the last time you were in Brooklyn prior to this past Sunday?

A I believe it was with Warden Glick at the time of the establishment of a library program.

Q When was that, I would like a date.

A A year and a half ago.

Q Prior to that date?

A Possibly a year before that.

Q I would like to see those standards for a moment that I think went in as Exhibit 4 and 5.

I take it these are the standards of the American Corrrection --

THE COURT: YOu have the United Nations.

I give less weight to the United Nations than to the United States.

Q Is there anything in these standards specifically forbidding a two-man cell?

A NO, sir.

Q You discussed an 80 square foot cell that's being proposed. Has this been done anywher?

A It's one of the guidelines --

Q It hasn't. Thank you.

Now, if this was adopted, how many institutions would be rendered faulty?

A I have no idea.

Q By such a determination?

A I have not made a survey, sir.

Q How many -- what percentage of all the cells in this country-- you're a qualified expert -- what percentage of all the cells in this country are 80 square feet?

THE COURT: You might as in what proportion he has seen.

Q From your knowledge, perhaps literature you've come across, or discussions you've had, what percentage have 80 square feet?

A I would strongly suspect that any institution that's been built since around 1965 --

Q A percentage of a lot of institutions have been built way, way before that, 1965?

A That's right.

Q I'm interested in how many penal systems you're rendering obsolete --

THE COURT: Wait a minute.

Q --through the suggestion.

THE COURT: I think the rendering obsolete is a rather contentious statement. The witness ought to be able to finish first as to what's happened since '65 and what proportion of the total penal institutions is embraced in the post-'65 construction.

THE WITNESS: That I can't answer. I'm thinking of two institutions in particular. One of

them is Marion, Illinois, Federal Bureau of Prisons.

BY MR. TOBIAS:

Q I'm not interested --

THE COURT: You can't dictate his answer. Let him give it.

A The other is Lucasville in the State of Ohio. But I cannot give you specifically --

Q All right. Thank you.

Now, in your testimony on direct examination, you discussed the fact that certain of the factors that you saw this past Sunday were irritants that when added up created a great problem for the inmates, I take it.

Now, does prison itself grate on inmates' nerves?

A Very definitely.

Q Aren't there factors in prison that even with your proposals would consistently grate on an inmate's nervers? Wouldn't it grate on his nerves?

A Yes, we attempt to reduce all the rest of the problems, however.

Q Would the fact he doesn't like his correction officer grate on his nerves?

A Yes.

Q The fact he didn't like some of the people in

the institution with him?

A Yes, sir.

Q Now, the last time you were at this institution, I take it you were preparing for your presentation today. This was a Sunday; is that not correct?

A Yes.

Q Were any inmates in Court this past Sunday?

A I would suspect no.

Q Normally, in a detention institution, are there a lot of inmates in Court and in other programs that don't function on weekends?

A Yes.

Q So is it not the case then that what you saw was not, at least, a representative business day, this past Sunday?

A I saw representative Sunday.

Q Representative business day?

A That's correct.

Q Now, did you testify the average stay in these facilities when they were built was 21 days?

A That was an estimate that I made in terms of the development of those two facilities.

Q What is this estimate based on, is this based on records you've seen or studies?

A This is not on studies I've made personally. This is made on records or observations.

Q Whose observations and whose records?

MR. MUSHLIN: He's not letting the witness finish.

THE COURT: Wait until he finishes an answer.

A I believe, sir, if I were pressed, I could bring you the studies made prior to the building of the Brooklyn House of Detention which contains all of these documents.

Should you like to subpoena them, they are available somewhere in the records of the Correctional Association of New York. Studies were made prior to the construction of both of these facilities.

Q You testified that there was a problem of food in cells, did you not?

A Yes.

Q Were inmates eating in this setting, getting the food on the blankets, causing infestation problems? Would this mean that you would not recommend an inmate taking his commissary purchases, food items such a cookies, candy, etc., and keep them in their cells?

A No, sir.

Q You recommend they not do this?

A No, I would not.

Q Wouldn't these cause similar problems of infestation?

A There's somewhat of a difference between stew and a cookie and a cracker. I agree with you, sir, that there is the possibility when you have crackers and that kind of material taken back to the cell that crumbs can cause problems.

Q Can it not cause problems of infestation?

A Yes, it can.

Q Now, you've testified,as I've said before, these little things when they add up can mean a lot.

Would the same hold true for improvements developed by the institution, in other words, can an extra movie here and there or an extra program or an extra play once a week or an extra educational opportunity, can these features, piece by piece, go the other way and relieve some of the tension that you've characterized as characteristic of the institutions?

A These are the kinds of things that are normal in institutions in an attempt to hold down the problems.

Q Have these always been normal, sir, always been characteristic of these institutions or these recent

developments?

A My knowledge of New York State and City Correctional facilities is that in Brooklyn, at least, there were many more activities prior to 1970 than there are at the present time.

Q So it's your testimony then based upon your knowledge, the amount of programs have decreased since 1970?

A My knowledge --

Q Please answer yes or

MR. MUSHLIN: I obje..

THE COURT: I think he's entitled to give a full answer.

Q Have they increased or decreased, yes or no?

A In terms of inmate activity, my answer would be from what I know that the number of inmates involved, not not the number of programs --

Q I'm talking about the number of programs.

A I'm talking about the number of inmates. The number of programs may have increased horrendously. Programs can be developed for two or three inmates. I am much more concerned with mass movement and mass activities.

Q Do you know for a fact whether the programs that have been developed in the past few years are limited programs?

A It indicates that --

Q Specifically.

A Reports of the activities that I have seen would indicate that the programs do not involve the majority of the inmates.

Q Is this because of inmates not being interested in the programs?

A I do not know, sir.

Q What reports have you seen?

A One of the reports that I have seen is the State Commission of Corrections report in terms of the number of inmates that are involved in various programs.

Q Is this Commission report -- do these reports pertain to these institutions?

A Yes, sir.

Q Getting back to my original question, is it possible that the additions of these additional programs and additional features that as you've said numerically have increased since 1970, could this have the favorable result of decreasing the tension you described?

A Yes, sir.

Q Now, I know you've criticized the amount of lockout time -- I'm sorry, the amount of lock-in time in the institutions and you find the 15 to 17 hour period

unacceptable.

You've also said that as opposed to having this amount of lockout time, you would like to have a situation where people are constantly on the go, doing things, moving around, letting their bodies exert themselves.

Now, do you feel a situation wherein an inmate gets up, eats breakfast, has a lockout, goes back to his cell, has another lockout period, goes upstairs to a program, comes back to his sell, eats lunch, comes back to his cell, possibly sees a visitor at night or a movie, then comes back to his cell again, all centered around the mean, does this not offer some movement?

A Yes, sir, it does.

Q You've also said that, I believe, you favor keeping the cells open during lockout times -- no, as his Honor has indicated,you can foresee the security problems in this area?

A Yes, sir.

Q Now, if you can picture the institutions for a moment, obviously there's a long tier with a number of cells, maybe 20 or 30 cells.

Can a Correction Officer looking down the tier, looking down this corridor see into the interior or the back ends of the cells?

A No, sir.

Q We can't see what's going on in the back end of the cells?

A No, sir.

Q I know you're critical of these institutions which you've characterized as being maximum security institutions.

Now, I've also heard your suggestion they make one of the Bureau institutions a maximum institution and one a medium and one a minimum security institution.

Do you think that it's a favaorable development to have an institution close to a court, close to a criminal court? Do you feel this is a requirement?

A No, sir. I am much more concerned with the convenience and the handling of the inmates than I am at the convenience of the attorneys and the Probation Department.

Were I not, I would not have been opposed to the development of facilities on Rikers' Island.

Q Do you feel there is something to be said for having an institution close to court?

A Yes, sir, there is. On balance, it is not as desirable, however, as having a facility which is more supportive and helpful for the inmate.

Q Yesterday --

THE COURT: You were opposed to Rikers' Island?

THE WITNESS: Sir?

THE COURT: You were opposed to the Rikers Island development?

THE WITNESS: In one sense, yes, sir.

BY MR. TOBIAS:

Q Yesterday, a Warden Gangler testified that it was a desirable feature of an institution to be close to an inmate's home. Do you feel this is a favorable factor?

A Yes, sir.

Q Now, Mr. Goff, do the American Corrections Association Standards carry the force and effect of law?

A No, sir.

Q Have the rules and regulations and standards adopted by that institution been adopted by any local, State or Federal Government?

A You mean the American --

MR. MUSHLIN: Objection, it hasn't been offered as law.

THE COURT: The defendants are entitled to determine how limited their application may be.

You may answer.

THE WITNESS: They have been adopted as guide-

lines by a number of states, yes, sir.

BY MR. TOBIAS:

Q Have they been adopted into law?

A Not to law. The minimum standards rules for the United States.

MR. MUSHLIN: He's not letting him finish.

THE COURT: Don't answer a question you have not been asked. You can be asked on redirect if the plaintiff wants to do so.

Q I take it you were the Chief of the Bureau of Corrections for the State of New Jersey?

A Yes.

Q Prior to that time had you personally supervised any correctional institution?

A Prior and during that time I did, yes, sir.

Q When was the last time you performed such supervisory duties?

A I believe it was in 1955 or 1956.

Q Now, what type of facility did you supervise?

A Reformatories.

Q Were these inmates in these reformatories pursuant to judicial sentence?

A Yes, sir.

Q In other words, these were not detention

facilities?

A No, sir.

Q Have you ever supervised a detention facility?

A No, sir, not directly.

Q Now, I notice here you were Chief of the Bureau of Corrections.

During that time, did your duties include supervision of the facilities or was your function merely limited to inspection?

A No, sir. My function was limited to inspection vis-a-vis county jails and municipal lockups. With regard to the State facilities, this was a functional position. It was not inspection.

Q Sir, you have used the words "accepted correctional practice" on your direct testimony.

When you use this terminology, are you referring to your American Correctional Association standards?

A I am referring to not only the standards but I'm referring to the standardization of judgments of the professionals which are in the field.

Q Now, at the present time are you familiar with the Federal detention facility at West Street?

A Somewhat, yes, sir.

Q Do they have two men per cell?

A To my knowledge, no.

Q They do not. Is that your expert testimony on that issue?

A I said, "to my knowledge, they do not."

THE COURT: Does that mean you know they don't or you do?

THE WITNESS: To my knowledge, I cannot say whether they are celling double today or not. I would strongly suspect they are not.

Q Would you strongly suspect that there aren't any detention centers in this country who are -- practice using two people in a cell?

A That there are not?

Q Yes, sir, there are not.

A I would suspect there are detention facilities in this country which are celling double. They are celling, I believe, in some of the institutions, four to a cell.

But the cells may be twelve by twelve. In other words, they are larger cells, usually squad rooms.

Q Do you know the dimensions of the West Street facility cells?

A No, sir, I do not.

Q I take it that you feel that one of the principal objections to the double cell situation is the

tenant's lack of privacy, am I not correct?

A It is one of the factors, yes.

Q Do you feel a dormitory facility, where you not only have one other inmate to contend with, but maybe 30 or 40 inmates, is similarly lacking in privacy?

A My personal reaction which I am fee to admit is not fully accepted by all of my colleagues in correction is that I believe in flexibility of housing. I believe that there should be some dormitory facilities, as well as individual rooms.

Q Is a dormitory facility private?

A No, a dormitory facility is not private.

Q Do you think one of the objections to the double cell situation is that the inmate doesn't have a chance to get away from it all and be by himself?

A That's part of it.

Q Yes.

Would not a dormitory inmate have the same problem?

A Very possible. You would not have the close proximity of physical confines. I believe if we go into the standards of ACA and most of them --

Q I'm not concerned about that right now. I'm concerned about privacy.

THE COURT: I think, Mr. Tobias, if he's asked about privacy in a dormitory, he's entitled to say how close the beds are to each other.

MR. TOBIAS: That's an element of privacy, too.

BY MR. TOBIAS:

Q I'm talking about the ability to get away from it all and be by yourself. It's something I would like to do --

THE COURT: I hope inmates are.

Q Do you feel it's desirable to give a man a chance to go and get away from it all?

A Yes, I do.

Q Would a dormitory inmate not have this opportunity?

A Some individuals may need and may want the support of other people being around them.

Q Sure. That's right. What about this privacy aspect that you dwelled on for quite some length in your direct examination? I would like to know this: I would like to know: Do you feel that the dormitory situation is similarly lacking in this quality?

A A dormitory is not a private situation. That is your answer. Inmates do set up blankets, however, in dormitory situations to develop some degree of privacy.

THE COURT: Do you also have in mind that the degree of concern about privacy differs with individuals?

THE WITNESS: YEs, sir. Some individuals want it. Some individuals do not. I believe my testimony, sir, was in terms of the individual cannot have privacy when he's forced into a double cell. I believe the department itself recognizes the desirability of dormitories. They are used for sentenced inmates. They are used for suicide watches and in other words, there are certain catagories of individuals. That's the reason I said my personal preference is for some flexibility so that you can have a dormitory and you can have individual rooms and again, I would admit that some of my colleagues in correction do not like dormitories.

They are opposed to dormitories because they claim that there is, as counsel pointed out, lack of privacy and problems created.

If it is a voluntary operation as to who goes in and who doesn't, it's different.

BY MR. TOBIAS:

Q Mr. Goff, we have heard testimony from several inmates. I don't think there's been an exception that each

and every one that has come to the witness stand yesterday and today has testified that they just don't get the privacy they need in a double cell.

If they were assigned to a dormitory situation, might they not have the same problem?

MR. MUSHLIN: He's asking this question now, this is about the fourth time.

THE COURT: This will be the last time.

A Yes, sir. It will be the same problem in terms of privacy.

Q You mentioned the term human compression. I would like to know whether or not the prison situation itself is one of human compression?

A Yes, sir, it is.

Q So that it's not totally characteristic -- withdrawn.

It's not solely characteristic, this human compression situation of the double cell but mainly it's a characteristic of an institution itself; is that not so?

A Any institution where an individual loses his freedom, forced into a confined situation is in some degree inhuman compression. We attempt to do everything possible to reduce extraneous things on top.

THE COURT: You are doing what experts alwasy

did when I was cross-examining.

THE WITNESS: What's that?

THE COURT: You answer the question and then you go on and explain why he hasn't asked everything that applies that is relevant.

THE WITNESS: I apologize.

THE COURT: Go ahead, Mr. Tobias.

BY MR. TOBIAS:

Q Mr. Goff, are you familiar with the exact lockout hours at both the Queens and Kings Houses of Detention?

A I believe I am at the Queens facility. I believe that they are similar at Brooklyn.

Q What are they, please, can you describe them to the Court?

A Yes, sir. I believe that the awakening hour is 6:30. Feeding is around 7:00. Locked until 8:00. From 8:00 until 11:00 is locked out. From 11:00 until 1:00 is locked in. Feeding and I assume accounts.

Lockout is from 1:00 until 3:00. Lock-in is then from 3:00 until 6:00.

Q Is there another lockout period?

A I believe there is a lockout period until 9:00, if I'm not mistaken.

THE COURT: 6:00 to 9:00?

THE WITNESS: 6:00 to 9:00.

BY MR. TOBIAS:

Q Do any of the institutions differ?

A I couldn't testify to that, sir. I would suspect that they are all pretty generally on the same schedule.

Q In other words, you don't have specific knowledge of the lockout hours, at least, at one of these institutions?

A At Brooklyn, I do not know the specific hours other than the fact that in discussion --

Q Thank you.

A -- we were told the number of hours.

Q Did you visit the institution at a meal hour?

A No, sir.

Q Do you know how long it takes to distribute the meals at these institutions, specifically these institutions, not institutions in general?

A Yes, sir.

Q You do?

A The officer on the wing said he feeds an entire floor in twenty minutes.

Q Did you observe any of this feeding?

A Not on Sunday, no, sir.

Q Did you observe the cleanup details --

A Not on Sunday.

Q -- performed both by inmates and the sentenced help?

A Not on Sunday.

Q You have no idea how long it takes these particular individuals to perform these functions?

A You mean clean up?

Q Yes. These particular people at these particular institutions, do you have any idea how long it takes?

A The centers indicated to me -

Q From observation.

A Not from observation, not on Sunday.

Q How about the head count procedure? Did you see one of these being conducted?

A No, sir.

Q You didn't observe how long that procedure took?

A No, sri.

Q Did you see the guard shift being changed at this institutions?

A No, sir.

THE COURT: We will take our afternoon recess now. About five minutes.

(recess taken.)

fls.SS K/elc

Goff-cross

MR. TOBIAS: I wonder if you can read the last question?

(Question and answer read.)

BY MR. TOBIAS:

Q Now, Mr. Goff, I believe you stated that any opportunity to move an inmate around the institution is desirable; is that not correct?

A Yes, sir.

Q Are you familiar with all the programs offered at both institutions?

A I don't think I can honestly say I am familiar with all of the programs, no, sir.

Q Do you know in what areas inside the institution these programs are held?

A In general, I believe yes, sir.

Q All right.

Do you know where the Arts and Crafts Program is held in the Brooklyn House of Detention?

A Is it not held in the basement?

Q Are you familiar with the library facilities at Kings County?

A Yes, sir, to some extent.

Q Where are the library facilities?

A I believe the library is a floating library

in Brooklyn, if I am not mistaken, with the carts being moved around. I believe this is a program that was developed by -- it was developed by a volunteer, Tina Ruth, Hank Ruth's wife, to move the carts they would get women involved.

Q Is it your testimony, then, that there were no physical areas designated as libraries, per se? Is that what you are saying?

A No, what I'm saying is that the basic library program, to my knowledge, in Brooklyn, is a program involving the use of carts and carrying materials.

Q I'm going to ask you a question: I would like a specific answer:

Are there any physical facilities designated as library areas in the Brooklyn facility?

A That I can't specifically answer, no, sir.

Q Do you know how many day rooms there are per floor in the Brooklyn facility?

A In Brooklyn?

Q Yes.

A Yes, sir, I believe that there are four per floor.

Q Mr. Goff, do you know how often the average inmate at Kings County, at the Kings County facility, leaves the residence floor?

3 Goff-cross

A No, but I can estimate it.

Q I don't want an estimation; do you know how many times, on the average, a prisoner leaves the floor? You believe that movement is desirable, so you -- do you know on the average how much movement there is?

A I don't believe anybody knows how much movement there is inbetween --

Q I am asking whether you know?

A No, sir, I don't have a count.

Q Thank you.

Now I would like to address the next question to maximum security inmates only:

I'm going to ask you whether or not, if an inmate were locked out eight hours per day, with at least one of these hours being involved in programmed activity, would you say that there was sufficient activity for this particular class of inmates?

A If there was movement and mobility involved.

Q You would say that would be sufficient, then?

A One hour a day?

Q One hour a day, eight hours' lockup for maximum security --

MR. MUSHLIN: I will object; that is a vague question as to the hours of lockout.

4 Goff-cross

MR. TOBIAS: I will make it specific.

THE COURT: You said eight hours' lockout, including one hour of programmed activity?

MR. TOBIAS: Yes, your Honor.

THE COURT: Do you think that is sufficient?

THE WITNESS: I would want to see the program for eight hours, with a minumum of eight hours of recreation --

MR. TOBIAS: No, that is not the question.

THE COURT: Then does that mean that you think eight hours of lockout including only one hour of program is inadequate?

THE WITNESS: Yes, sir, I do.

MR. TOBIAS: All right.

BY MR. TOBIAS:

Q Mr. Goff, did you testify in the REM Hearing?

A Yes, sir.

MR. HERMAN: What page?

MR. TOBIAS: Page 665.

Q Mr. Goff, I would like you to tell me whether or not this question was posed and whether this answer was given by you:

"Question: As separate and apart from his locked-out activity, so if he were to lock out eight hours a day at the very least, one of thom hours would be in

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connection with programmic activity,,away from his housing area.

"Answer: I would think for maximum security individuals, that probably would get through, somehow, in my estimation."

A Yes, sir.

Q Thank you.

MR. MUSHLIN: Your Honor, I would like, for fullness of the record, I think we should be allowed to read the following question and the following answer --

THE COURT: I will let you do it.

MR. MUSHLIN: "The Court: What do you mean by 'get through?'

"The Witness: Unfortunately, your Honor, there are so many facets and so many factors that are involved that simply getting a bare schedule on it becomes difficult to make any firm evaluation. I think --"

If I may, one more comment:

"The Court; Your remark seems to me to carry, from your point of view, the concern that I have had. If any such hypothetical question is to be meaningful, either to the witness or to the Court, if the answer

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6 Goff-cross

of the witness is to mean anything to the court, it has to be based on sufficient detail to permit a considered determination."

THE COURT: Well, this isn't the time to argue as to the extent to which I am going to make the same rulings that Judge Lasker did.

MR. MUSHLIN: Yes, sir.

THE COURT: Go ahead, Mr. Tobias.

BY MR. TOBIAS:

Q Now, Mr. Goff, do you think that a full-fledged classification program in a detention facility under question is possible?

A Yes, sir.

MR. TOBIAS: I would like to direct counsel's attention to page 600.

Q Now, I would like to ask you whether or not this was your testimony at the REM Hearing?

"Question: How would you determine which individuals require maximum security?

"Answer: Everybody that comes into the institution for a period of, let us say, approximately a week, would be in maximum security. They would have to be. During this period, there are a number of criteria that might be used to determine whether or not the individual can

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go into medium or minimum security facilities if they were available.

Criteria that might be used? We are not talking about a full-fledged classification program. That's impossible. But at least there can be part of a security classification program developed."

Now, was that testimony that you gave during the REM Trial?

A Yes, sir, it is.

Q Thank you.

Do you feel there are inherent problems in classifying inmates in large metropolitan detention facilities?

A Inherent?

Q Inherent problems, in herent particular problems that are particular to these large, metropolitan detention facilities as opposed to other areas, that is, other detention facilities in other parts of the country.

THE WITNESS: Your Honor, there is some confusion about classification that is related to this whole question, and I wonder if, with your indulgence, I could move into that.

(continued on following page)

EK:GA
T2R2

MR. TOBIAS: No, I would like to move into my question.

THE COURT: First, I guess, are there pro blems in any type of classification that are different in New York City from what they would be elsewhere in the country?

THE WITNESS: No, sir, I don't believe in principle that there is any marked difference between New York City, in principle --

THE COURT: Well, between New York City, Chicago, or Detroit --

THE WITNESS: No, sir, I don't believe so.

THE COURT: (continuing) -- and other areas, in smaller, less urban areas?

THE WITNESS: No.

BY MR. TOBIAS:

Q Your answer to my question would be no?

A The answer to your question would be, I don't think that there are any principled-inherest problems. There may be unique problems to New York City, there may be unique pro problems to Chicago --

Q I'm asking you for a yes or no, please.

MR. MUSHLIN: Your Honor, I'm going to object, these are complex questions.

2 Goff - cross/Tobias

THE COURT: You have a contentious word in there, I think "inherent," or "principle."

I think I will let the answer stand.

MR. TOBIAS: All right.

Q Now, you have given us a figure of 20 to 40 percent, which you feel is the correct figure, or correct number of inmates relatively who could be classified as maximum security inmates; is that not correct?

A I am talking about 20 to 40 percent of the facilities should be maximum security.

Q I want to know whether or not of a particular inmate population, specifically the inmate population that we are discussing, do you think, is it your testimony that 20 to 40 percent of them are maximum security risks?

A No, sir.

Q That is not your testimony?

A No, sir.

Q What would your figure be, then?

A My figure would be 15 to 20 percent of any population.

Q 15 to 20 percent.

Now, I take it that in arriving at the 15 to 20 percent figure, you have made detailed study of the populations at both Brooklyn and Queens in terms of their yellow sheets, in

terms of the gravity of the offenses, their familial backgrounds, the prior convictions, the types of convictions, I think it you have done all of that before you came up with this figure; am I not correct?

A I personally am not the only individual who has come up with this figure, this figure is the figure that was come up by the "Correction Authorities."

THE COURT: Was it based on a detailed study of the particular records at Queens?

THE WITNESS: No, sir, it was not.

Q Now, you have testified, I believe, that you feel that every inmate who comes into an institution should be given maximum security treatment for at least the first week, week to ten days; is that not correct?

A I testified that it would probably take that long before you were able to classify them.

Q Fine. You have testified "yes" to that question; is that not correct?

A That every inmate coming into an institution, until classified, must be assumed to be an escape risk.

Q Do you know what percentage of the inmate population at either Queens or Brooklyn have been there for only one week to ten days?

A I can't give you a figure on that, no, sir.

Q But that number, and it is certainly your estimation, forgetting about their records or their backgrounds, or anything else, that figure in and of itself would represent a segment that needed maximum security treatment.

(The witness indicated in the affirmative.)

Q Of course you don't know what that figure is?

A (The witness indicated in the negative.)

MR. FRIEDMAN: Your Honor, the witness has to the first question shaken his head to indicate yes, and then no.

THE COURT: Yes, all right.

THE WITNESS: I apologize.

BY MR. TOBIAS:

Q Mr. Goff, I believe you have testified that you feel that it is preferable to have a situation wherein there are three inmates in a cell, if there has to be that setup, assuming there were room for the three as opposed to two?

A Yes, sir.

Q Are you not creating a risk whereby you have the possibility of two people with double the strength, ganging up against one individual inmate?

A Yes, sir.

Q Now, Mr. Goff, you have also testified that you feel that the Department of Correction must measure -- Well,

must measure the escape risk presented by an inmate in determining whether or not he should be placed in maximum security.

A That is true, yes, sir.

Q I take it that to your way of thinking this is a primary thing that must be measured after all the classification studies are made; is that not so?

A This is one of the aspects, a principle aspect in terms of classification.

Q But, sir, I wonder, is not order and decorum within the institution another aspect that must be measured?

A Order and decorum as defined by whom, sir?

Q As defined by the authorities who are responsible for keeping order in a functional institution.

A No, sir, I would disagree wholeheartedly if the definition of that which constitutes "order" comes from an individual other than the administrator.

Q Is it your testimony that one of the things, one of the things that we should not consider is a person's or inmate's potential for being unruly and for being a prisoner who would tend to have a deleterious affect upon the co-prisoners of the institution?

A I would certainly hope not, sir, I hope we won't be incarcerating and convicting individuals based upon their "potential" institutional capacity for order and institutional

disorder.

Q You don't think we should not consider what the violent ones might do, based upon their past history of violence, what he may do in the institution: You don't think that that should be taken into consideration?

A It is a factor, but it should not be the principle factor.

Q It should be a factor to be [illegible]ered --

A A factor --

Q (continuing) -- in determining whether or not a person is in a particular type of classification, and should that be a factor in his classification?

A Yes, it should be.

MR. TOBIAS: No further questions.

3 fls

(continued on next page.)

2/3
EK/elc

Goff-cross

THE COURT: Mr. Goff, my copy of Judge Lasker's opinion said you testified that except for a range of 20 to 40 percent of detainees whose character or offense might require maximum security confinement, it is not necessary to keep detained inmates in cells at all; is that your testimony?

THE WITNESS: In maximum security cells.

THE COURT: Oh, I see.

Now, you have told theories about what is the best way to run an institution, but if given the facts that I am going to have to face here, that is, if you know enough about the institution to tell me, I would like to know, given the staff that they have, given the physical facilities they have, given the length of time that it takes for inmates to get to trial, how can doubling celling be reduced?

THE WITNESS: I can only postulate, sir. I believe at the present time New York City has a contract with the State of New York; the information that I have received from classification in the State is that they were prepared as of September first to receive 900 New York City inmates.

THE COURT: Where would that be?

THE WITNESS: Ossining.

Goff-cross

THE COURT: Does that involve a constitutional issue or a legislative or administrative determination that is, whether or not it is worthwhile sending inmates from 40 miles, from New York City.

THE WITNESS: I believe that is an administrative determination, sir.

In terms of long-range operation, it is highly possible that the New York City Department of Corrections should end up with no sentence-inmates, but should have only detainees.

THE COURT: Well, is it good therapy to have work in the institution done by residents rather than by an all-paid staff?

THE WITNESS: Yes, sir, but I believe that it is highly possible to obtain, and I believe the Department has made a major step in this direction, to use volunteer detainees to do the work. Volunteer detainees are presently being used.

THE COURT: You think perhaps that more could be used?

THE WITNESS: Yes, sir, I do.

THE COURT: Mr. Mushlin, do you have anything further?

MR. MUSHLIN: Yes, your Honor.

3 Goff-cross

THE COURT: Do you have any other questions?

MR. MUSHLIN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. MUSHLIN:

Q Mr. Goff, on cross-examination you were asked whether or not you opposed Rikers' Island, the construction of Rikers' Island Detention facilities?

A Yes, sir.

Q Could you tell us why you opposed that?

MR. FREEDMAN: I object to that, your Honor.

THE COURT: Let him answer.

BY MR. MUSHLIN:

Q Would you tell us why you oppose it?

A I was opposed to the construction and the centralization of the Department of Corrections on Rikers' Island as becoming a Devils' Island idea. The point that we are pushing very strongly was for community residences scattered throughout the City, rather than the development of a total correctional complex on Rikers' Island.

Q I see.

Now on cross-examination, Mr. Tobias was asking you about the situation where cells might be open so that inmates could go into the cell during the lockout periods, and he asked you whether an officer in the bridge

4 Goff-cross

area could see down the sides and into the cells, and you said, I believe -- you replied no.

From your knowledge of the facilities, is there any other physical way that an officer could have a view of the entire tier area?

A Yes, sir, as a matter of fact, I believe when both of these facilities were built, the post assignment arrangement on it was to include an officer who was walking down on the catwalk on an observation basis so that he can see into the cells. As it stands now, with the staffing personnel, the staffing personnel is only two officers in that bridge, and it is impossible to see down any of the tiers, whether the cells are locked or whether they are unlocked; and the purpose of the catwalks on the outside of the aisle, which is outside the cells, well, it was a patrolling post so that an officer walking back and forth there can see into every one of the cells.

Q I see, and without being among the inmates?

A Without having any direct contact with the inmates whatsoever. In other words, it is an observation post. I believe that there has been the observation made that there is need for additional correction officers; if it has not, I definitely would affirm the need for additional personnel which would permit the loosening up of the

facility so that there is not the need to rely upon steel and locking.

Q So when you were speaking of, I believe, program and facilities and personnel --

A Yes, sir.

Q (continuing) In this case, what would be lacking would be the personnel, the facilities are there; is that correct?

A Yes, the facilities are there.

Great improvement could be made if that whole area could be opened up under the observation of officers with additional posts assigned.

Q Mr. Goff, you spoke on direct examination about the feasibility of a classification program for Queens and for Brooklyn houses of detention.

Now, if you will recall, on cross-examination Mr. Tobias directed your attention to your testimony in other proceedings where you said, in terms of pre-trial detention centers, we are not talking about a full-fledged classification program.

Can you explain?

A Yes, I can.

Classification is not just the labeling of individuals. Classification is a development of a total

treatment program. It is housing, it is security, it is treatment. A full-fledged classification program would be the development of these other areas in addition to the security classification.

So what I'm saying is that it is feasible for New York City to develop a classification program to take care of one aspect of this total complex of classification, which is the security aspect.

Q I see, in other words, one can be implemented.

A One can be implemented without the full aspect of it.

Q I see.

MR. MUSHLIN: With the Court's indulgence.

No further questions.

THE COURT: All right.

Anything more of Mr. Goff?

MR. TOBIAS: Yes, your Honor.

RECROSS-EXAMINATION

BY MR. TOBIAS:

Q Mr. Goff, have you changed your definition of full-fledged classification program since you testified in the REM Case? Yes or no?

A No --

Q Thank you.

MR. Rem (Sic) -- a Freudian slip.

Mr. Goff, I noticed there from your summary which I have just had a chance to --

MR. MUSHLIN: Excuse me. For the record, I'm going to have to object, it has been given --

THE COURT: This is recross; I will permit it.

BY MR. TOBIAS:

Q I have noticed that you had testified as an expert witness in several cases such as this, now, when you testified, did you testify exclusively as a plaintiff's witness in these cases?

A No, sir. As a matter of fact, I believe in one case I testified as an expert for the Corporation Counsel of the City of New York.

Q Fine.

Does your testimony involve financial remuneration of any kind?

A No, sir, other than expenses.

MR. TOBIAS: No further questions.

MR. MUSHLIN: No questions.

THE COURT: Thank you, Mr. Goff.

(The witness was excused)

THE COURT: Are we through until two o'clock tomorrow?

MR. HERMAN: Your Honor, I would ask your Honor to sign some writs so we can have the inmates present to witness the proceedings. They are parties in and representatives of their class and I think it would be important to have them present.

THE COURT: Well, I have permitted that in the past.

MR. HERMAN: Thank you, your Honor.

THE COURT: I think they should be brought back tomorrow, too.

MR. HERMAN: Thank you.

THE COURT: All right, I will sign these things.

(A recess was then taken until January 23, 1974, at two o'clock p.m.)

* * * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

RALPH VALVANO, DONALD LEROLAND and JONATHAN WILLIAMS, individually and on behalf of all other persons similarly situated,

Plaintiffs,

-against-

GEORGE McGRATH, Commissioner of Correction for the City of New York; JOHN V. LINDSAY, Mayor, City of New York; JOHN P. KENNEDY, Warden, Queens House of Detention for Men; ALBERT OSSAKOW, Acting Warden, Queens House of Detention for Men; THOMAS J. MACKELL, District Attorney, Queens County; individually and in their official capacities,

Defendants.

70-C-1390

----------x

United States Courthouse
Brooklyn, New York

January 23, 1974
2:10 o'clock p.m.

B e f o r e:

HONORABLE ORRIN G. JUDD, U.S.D.J.

EMANUEL KARR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
FEDERAL COURT HOUSE. ROOM 362
225 CADMAN PLAZA EAST
BROOKLYN. N. Y. 11201

TEL. ULSTER 2-7105-7106-7107

Appearances:

LEGAL AID SOCIETY
Attorney for the plaintiffs

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MICHAEL B. MUSHLIN, ESQ.,
PIERCE GERITY, ESQ.,
M. VICTOR GEMINIANI, ESQ.,
Of Counsel

ADRIAN P. BURKE, ESQ.,
Attorney for the City of New York

BY: DONALD J. TOBIAS, ESQ.,
-and-
JEFFREY FRIEDMAN, ESQ.,
Of Counsel

RONALD ZWEIBEL, ESQ.,
Director of Legal Affairs
New York City Department of Corrections

THE CLERK: Civil cause on trial, Valvano against Malcom.

THE COURT: I had someone call Mr. Friedman to say that my case this morning had to be adjourned, and while I spent most of the morning on grand jury matters, I'm ready this afternoon to proceed with the trial and apparently to continue through most of tomorrow, which I hope may complete it.

Mr. Gerity, is your witness here?

MR. GERITY: Yes, he is, your Honor.

THE COURT: All right, let us proceed.

I am not sure whether anyone is ordering copy, but we will put something on the record about that.

MR. HERMAN: Your Honor, we ordered daily copy and the City has also.

THE COURT: I see. All right, apparently you have more money than you had in the beginning of the case.

MR. GERITY: The plaintiff calls Augustus Frederick Kinzel.

A U G U S T U S F R E D E R I C K K I N Z E L, called as a witness on behalf of the plaintiffs, having been first duly sworn by the clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. GERITY:

Q Dr. Kinzel, what is your occupation or profession?

A I am a physician.

Q Do you practice psychiatry?

A Yes.

Q Were you trained as a doctor of medicine?

A Yes.

Q Where?

A At the University of Pennsylvania.

Q When was that?

A In 1962, I received my M.D. degree.

Q Did you do an internship subsequent to that?

A Yes, I interned at medicine at the Boston City Hospital.

Q And are you licensed as a physician?

A Yes.

Q What sort of training have you had in psychiatry?

A I had the three-year psychiatry residence training program at the Columbia Presbyterian Hospital and at the New York State Psychiatric Institute. And during my last year I was Chief of Residencies there.

Q Are you certified by the American Board of Psychiatry and Neurology?

A Yes, sir.

Q Have you had any advanced training?

A Yes.

Q Could you tell us what that is?

A I am certified as a psychoanalyst with the Columbia Psychiatry Analytical Clinic for Training and Research.

THE COURT: We will take a five-minute recess now.

(A five-minute recess was taken on other matters.)

THE COURT: All right, Mr. Gerity, you may continue.

MR. GERITY: Thank you.

BY MR. GERITY:

Q Are you a member of any professional societies?

A Yes.

Q Can you tell us which?

A I am a member of the American Medical Association, a member of the American Psychiatric Association, and I am a charter member of the American Academy of Psychiatry and Law.

Q Are you a member of any committees in those societies?

A Yes, I am chairman of the Task Force on the Right to Treatment of the American Academy of Psychiatry & Law.

I am assistant chairman to the Committee on Prisoners of the American Psychiatric Association, the district branch in New York.

Q I take it you are in the private practice of psychiatry?

A Yes.

Q And in addition to private practice, do you also teach?

A Yes.

Q What courses do you teach and where?

A I am an instructor in psychiatry at Columbia University; I teach courses in psychiatry and law to the School of Public Health, a division of community psychiatry trainees, and I help teach the basic course in psychiatry to medical students, and I am supervisor and planning a course, a combined course at Columbia Law and the Department of Psychiatry, in Psychiatry and Law.

Q Dr. Kinzel, have you ever worked in a prison?

A Yes.

Q Where?

A I worked for two years in the United States Medical Center for Federal Prisoners in Springfield, Missouri.

Q Is that for pretrial and/or sentenced prisoners?

A Both.

Q At Springfield, what was your position?

A I was staff psychiatrist assigned to the maximum security units.

Q And could you describe what your duties were in that capacity?

A I was responsible for anywhere up to ninety inmates housed in maximum security units, for their medical care and psychiatry care and for their rehabilitation.

I also was consultant to the prison discipline committee, where men would be referred to who committed offenses in prison to decide whether or not they needed maximum security.

In addition, I did over several hundred evaluations for competency to stand trial and insanity testing for offenses for federal courts throughout the country.

Q What years were you at Springfield?

A '66 to '68.

Q In addition to the duties that you have just described, did you conduct any research while you were there?

A Yes.

Q Will you describe briefly the nature of that research?

A I noticed that as the violent prisoners came by through the disciplinary committee and we were able to review

the situations that prompted their violence towards each other -- usually most of the prompting or the contributing factors tended to be irrational rather than rational, they would not fight or assault one another for property or things, as you might think they would. And having reviewed fairly carefully the situations that provoked violent incidents, I got the impression that they were exquisitively sensitive to physical closeness, which was one among other emotional sensitivities that they had, and I also noticed on my daily rounds among prisoners that when they tended to be more violent-prone they would stand -- well, as I would stand in the doorway of their cell they would tend to stand further away from me, whereas if they were in a less violent-prone mood they would stand closer to me, and it was on the basis of observations like these that I designed an experiment whereby I approached them with the instruction that they should say "Stop" when they felt I came too close.

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DIRECT EXAMINATION

BY MR. GERITY (Cont.):

Q Doctor, before we get into the actual substance of the experiment, let me just ask you have the results of this research been published?

A Yes.

Q If so, where?

A In the American Journal of Psychiatry.

Q Is the American Journal of Psychiatry a recognized journal in the field of psychiatry?

A Yes.

Q Have there been any attempts to replicate or duplicate your experiments so as to validate your conclusions?

A Yes.

Q By whom?

A The findings were essentially duplicated by Hildrith in the Baltimore Correctional System.

Q Have their results been published?

A Yes.

Q Was that in the same journal?

A Yes.

Q And do they validate your principal findings?

A Yes.

Q Have you participated in any symposiums which

are relevant to this subject?

A Yes, I participated in the symposium on Aggression and Violence in Chicago sponsored by the American Medical Association, and the proceeds of that were published by the American Medical Association.

MR. GERITY: Your Honor, I would ask at this time that Dr. Kinzel be permitted to testify as an expert with regard to psychiatric problems and the affects of incarceration, particularly in areas of research as to the special needs of prisoners, including potentially violent prisoners.

THE COURT: Mr. Friedman, do you want any voir dire.

MR. FRIEDMAN: No, your Honor.

THE COURT: Subject to the weight which I will ultimately determine to give to the testimony.

MR. GERITY: May I also mention that in the course of his testimony Dr. Kinzel may offer some observations of a medical character in his capacity as a trained physician, and I wonder if there will be any objection to it.

THE COURT: Let us wait and see.

BY MR. GERITY:

Q Dr. Kinzel, will you please describe now the

experiments which you conducted at Springfield on prisoners, as to their need for personal space?

A Of the 36 most violent prisoners I could find, I chose 6, and about the same number of less violent prisoners I could find by history and by their behavior, and I chose another small group and I asked each to stand in the center of the room and as I approached them, starting at about 8 feet away and taking a step and then said, "Should I stop here or not?" In other words, the instruction was, "Say stop when you feel like I am too close."

When I got approximately 3 feet from the violent prisoners, they stopped me abruptly feeling acute anxiety, whereas when I approached the non-violent prisoners they let me come much closer, at about a foot and a half.

The consistency of this finding was quite high, and no matter how many times I approached them, they tended, the violent ones tended to stop me at an amazingly similar distance.

From what I could gather from other studies, these personal spaces are what we call body buffer zones, the space they kept around them in which they didn't want anyone to intrude, and they were larger than the average population. The basic finding, however, was that the body buffer zones or personal spaces of the violent prisoners were extremely large

by comparison to the non-violent.

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DIRECT EXAMINATION

BY MR. GERITY (Cont.):

Q Doctor, what was the approximate square footage of space at each of the categories of prisoners?

A The violent prisoners needed 29 square feet; the non-violent, 7.

Q Now, is this based on a -- this is based originally on a linear measurement? The amount of space, the distance from front or from rear that they -- which they told you --

A That's true.

Q Why do you attach so much significance to the fact that they said "Stop, what --"

A Well, I think the significance is this, that they were -- the violent prisoners especially were explicitly sensitive to this physical closeness, and the significance was that they were -- they seemed to have an abnormality of personal space. That is, they seemed to have an over sensitivity to it.

Q Was there any other reaction than simply telling you --

THE COURT: Off the record just a minute.

(Discussion off the record.)

THE COURT: All right. That was a different

matter I was discussing.

Continue.

A (Continuing) In addition, when I got to that point, when they would say "Stop," they very frequently would clench their fists, feel acutely uncomfortable, move away, and many of them told me that this is how they felt prior to exploding in situations where they were pressed in or crowded.

Q At this point you are talking of the most violent prisoners?

A Yes.

Q Was there similar reaction on the part of those whom you had selected as being the least violent prisoners at Springfield?

A They were also uncomfortable but they were not nearly as uncomfortable as the violent ones.

Q Now, you mentioned that your experiment had been to some extent duplicated by a group in Maryland. Could you describe their experiment and whatever differences or similarities there were in their findings?

A They took prisoners on a random basis, just by what number they happened to have next to their name. So that they didn't really know who was violent or non-violent, to start with.

Q What class of prisoners were they dealing with?

A They were dealing with sentenced prisoners, sentenced male prisoners between the ages of 17 and 40.

Q Was this a state correctional system?

A State correctional system, yes.

Q In the State of Maryland?

A State of Maryland.

MR. GERITY: Your Honor, for whatever relevance it may have, I would ask that you take judicial notice of the fact that Maryland is an Eastern seaboard state with a highly urban population.

THE COURT: Yes.

Q You've said that he took a random sample. How did his findings differ from yours?

A The essential findings were the same. The differences were in the shape of the -- of these body buffer zones.

My finding was that when you approached the violent man from the rear, he kept you at much further distance than he would keep you from the front, whereas the non-violent prisoner tended to keep you a little bit further when you approached him from the front.

THE COURT: How did they know where you were in the rear?

THE WITNESS: They could look or not look. It

didn't make any difference. They could just hear my feet or look at me. Either way. I did it both ways. It didn't make any difference.

The -- the Maryland study -- could you repeat the question?

Q Well, I think you have answered. You have answered it adequately.

THE COURT: No. You did not tell me what the Maryland studies were with respect to approach from the rear, if that's --

THE WITNESS: Yes. The approach from the rear did not separate violent from non-violent prisoners in the Maryland study. That is, the Maryland study found that the larger distance to the rear was also true of some of their less violent prisoners.

I can say this, that from other studies of non-prisoners, having a larger zone to the rear is abnormal.

Q Did -- what were the terms of square feet? What was -- what did the Hildrith, the Maryland study show, in terms of the needs of prisoners in that middle range, for body buffer zone?

A You mean, what roughly was the mean?

Q Yes. What was the square foot? What was the

square footage required?

A The Hildrith found that the violent were 17 square feet and the non-violent were 10. If you average these all out, just say what is the mean of the whole thing --

Q Together with yours?

A Together with mine, it would be about 16 square feet. That is, if you just took a group of prisoners and had to hypothesize, what is their spacial need, regardless of whether they are violent or non-violent, it would come out to about 16 square feet.

Q With the Hildrith, just so that we can have a better example, a better idea of what this amounts to, would you have the distance at any given point that -- at which a prisoner would begin to feel acutely uncomfortable?

A About two and a half feet.

(Continued on next page.)

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DIRECT EXAMINATION

BY MR. GERITY: (Cont.)

Q Dr. Kinzel, have you recently visited the Brooklyn and Queens House of Detention?

A Yes.

Q When was that?

A On January 19.

Q Did you visit the living areas, where the cells and dayrooms are located?

A Yes.

Q ANd did you make measurements or determine the size of the cells?

A Yes.

Q Could you give us -- what you found in terms of available living space, floor space in each cell?

A The available or -- the available floor space in which they could move around was about 20 square feet.

Q Now, based on your research and that of others, would that be sufficient amount of space for -- in which to confine two prisoners?

A No, it would not.

Q What would the effect be of confining, two, in your opinion, of confining two prisoners in a space of that size?

A If you confine two prisoners with an average

body buffer zone each of 16 square feet, they would be 32 square feet just to keep clear of one another, as far as this anxiety provoking experience is concerned.

If the cell is 20 square feet, that means that they are in a chronic situation of overcrowding. The -- the usual response to the -- to this chronic overcrowding is a withdrawal, what some have called cocooning behavior or withdrawing into a shell and each man trying to define in a -- overall emotional way his niche in the cell. And trying to define his own territory in the cell.

If you don't crowd people, they don't do that as much.

Q Now, if confinement under these circumstances were continued over a long period of time, say three months or six months, would that have -- what effect would that have psychologically?

A The other long-term effects are excessive sexual stimulation. That is, after a period of time, being physically close to one another, there can be aroused a latent -- latent sexual feeling, which is latently present in everyone, which they may not have experienced outside of the prison.

Q Are you talking now of body buffer zone or --

A The effect of putting two men, right, with this

size buffer zone in the overcrowded situation.

Q I see.

Now, are there any -- are there any other psychological implications of this type of confinement?

A The other psychological considerations are -- have to do with isolation and social isolation. That is, if you confine and pen up one person or two people, you socially deprive them.

We spend most of our days in some kind of social interaction and if you confine them, they don't have any opportunity for social interaction.

Q Now, on your visits to the Brooklyn and Queens House of Detention, did you have occasion to determine the size of the corridors and the dayrooms were adjacent to the cells?

A Yes.

Q Could you state approximately what the -- your findings were?

A The corridor of these -- I think your Honor has seen them. There is a tier of cells and then there is a corridor in front of these cells.

THE COURT: Yes.

THE WITNESS: -- is -- was five by ninety feet, which I calculate to come out to about 14 square

feet per person at full capacity.

Again, the normal or the average body buffer zone would be 16 square feet. The dayroom

THE COURT: That's if you have 30 people, two in a cell; is that right?

THE WITNESS: Right.

The dayroom at 20 by 26 feet would provide by my calculations nine square feet per person. Again, if the average is 16 square feet per person of the body buffer zone, again a crowding situation.

MR. GERITY: Excuse me.

THE COURT: Yes.

THE WITNESS: The -- there is a distinction between the Queens and the Brooklyn. Did you want me to --

BY MR. GERITY:

Q Yes.

A -- mention that?

Q Yes.

A That is, in the -- in the Queens, there is no -- the men are locked out of the cells and can't go back into them. So that the effective space is cut down when they are supposed to be in the corridor and the dayroom, whereas in the Brooklyn they are permitted to go back in.

It actually cuts the effective living space by

about half.

Q Now, as you've calculated it, the -- there is technically enough space, as I -- for each inmate to -- to have an adequate buffer zone around him?

A. Yes. If you include the corridor and the' dayroom, if they don't -- can't go back into their cells it's 23 square feet. If they go back into their cells, it's 43 square feet, which would be a little more than just the minimum space adequate so that they are not bumping into -- their bodies' buffer zone is not bumping into someone else's.

Q Now, I take it, that statement is based on an assumption of relative immobility.

Could you assume now movement, back and forth?

A Obviously they will have to be passing in front of each other and there still would be a good deal of intrusion on each other's body buffer zones.

Q When you visited the Brooklyn House of Detention, did you see how the dayrooms were being used?

A Yes. The -- in as far as they were able to, the prisoners were able to group themselves, space themselves throughout these spaces so that there was the minimum of overcrowding. In one of them they were playing a -- a football game without a football.

So that that activity at least, freed up some

space for the others who didn't want to participate in that kind of activity.

Q At the same time was anyone else besides the foot -- any other inmates besides the football players in that dayroom?

A I don't recall.

Q Did you see any reason why that dayroom was being used in a -- differently from the others, that is to say, what sort of activities were going on in the other dayrooms?

A The others they were watching television. Chatting.

Q In addition to the problem with the body buffer zone, on the lockout corridors and in the dayrooms, would confinement in those areas as you observed them have any other psychiatric effects on them, on prisoners?

A Yes. The other aspects of the nevironment besides the space, were, I felt, very damaging psychologically. The -- I don't want to leave the impression that I think brainwashing is going on in any kind of intended way but the conditions come very close to what have been described as conditions in which prisoners of war and so on are brainwashed.

The overcrowding we mentioned. The sensory

monotony -- that is, there is very, very little going on, the constant sensory stress, the noise level as has been mentioned in -- in the case of the Tombs is quite high.

One has the impression --

THE COURT: It wasn't a subway noise height in Brooklyn when I was there.

THE WITNESS: I noticed it both in Brooklyn and in Queens and when --

THE COURT: Did you take any decibel readings on it?

THE WITNESS: No, I didn't. But I -- I noticed it. That is -- really remarkable.

BY MR. GERITY:

Q Would you say -- was it as high as the Tombs, Doctor?

A I don't think it was a high as the Tombs but I think it was abnormally high. The deterioration of habits that are prompted by not having enough facilities to shower and to groom and that kind of thing..

The alienation from their families by their not being able to touch, and often only being able to have some communication through a dirty window, through which they have to climb up on bars.

MR. FRIEDMAN: Your Honor, I object to this

part of the testimony as not being an issue for this hearing at this time.

THE COURT: Overruled.

A (Continuing) They have to climb up on bars to see someone several floors down. And shout through the window. The frequent humiliation of being locked in with another person, who you don't -- may or may not with to be locked in with, having to deficate and urinate in his presence and this combination of environmental and stress factors, I noticed made some of the men look as if they had been affected by the environment.

For instance, there were several men pacing and there was no other explanation for pacing except by having been influenced as far as I could see. Several men were going through automatic behaviors. Going to one end of the cell and flushing it. Flushing the toilet. Coming back to the gate. Going back to flush the toilet, with -- for no good reason. One man spoke of how he swallowed razor blades and didn't know why.

This suggested to me that at least in part, there was some effect of the environment on them emotionally.

THE COURT: All right. Let's interrupt for a while, we will take ten minutes probably on this. I'm sorry. You may step down.

(Recess taken)

(After recess.)

THE COURT: All right.

Dr. Kinzel, we will resume.

DIRECT EXAMINATION

BY MR. GERITY: (Cont.)

MR. GERITY: What was the last questionand last answer.

(Record read.)

Q Doctor, what would be -- what would be the effects of the conditions which you have described on an inmate who is subjected to them for a period of three months, six months?

MR. FRIEDMAN: Objection, your Honor. Subjected to what?

THE COURT: No. I will let him answer. He's talking as a psychiatrist and a doctor.

MR.FRIEDMAN: He said subjected to that. I don't know what the question means. So I couldn't possibly cross-examine.

THE COURT: I thought he had in mind the conditions that the witness described. Maybe you should specify a little more fully.

MR. GERITY: Excuse me. I hesitated to introduce my questions with elaborate statements.

THE COURT: Then you'll have a question as to whether your introduction is adequate but I think you should specify what conditions you are referring to.

MR. GERITY: Yes.

BY MR. GERITY:

Q Doctor, you have just described --

A Can I list them again?

Q Yes.

A The sensory monotony, the isolation from sunlight and weather, sensory stress of a high noise level, uncertainty of length of confinement, deterioration of habits, the alienation from the family due to the inability to touch the family.

Q What would the --

A Conditions that mitigate for deficient personal hygiene.

MR. FRIEDMAN: Excuse me. Could you repeat that, Doctor? I didn't hear you.

THE WITNESS: Conditions that tend to produce deficient personal hygiene. Frequent humiliation of having to deficate and urinate in close presence of another person.

BY MR. GERITY:

Q My question was: What would the effects of prolonged subjection to conditions of this sort be upon the average inmate?

A The subjection to these conditions would tend to produce several things: Alienation, that is, the beginning mistrust of other people, --

MR. FRIEDMAN: I object, your Honor. The doctor is reading from a statement or some sort of a paper and if he's an expert he should know this without reading.

THE COURT: No. If he's an expert, I could have required that he have it all written out beforehand for you to cross-examine from. You are entitled to look at the paper that he is reading from.

MR. FRIEDMAN: Could I do that?

THE COURT: No. Afterwards. Or that he is using to guide him. You can cross-examine on that basis.

Go ahead.

A (Continuing) The alienation or increased suspiciousness of other people. Withdrawal from other people, was described by some as cocooning or a tendency to withdraw into oneself. The increased feelings of helplessness and despair.

Q Doctor, in your opinion, would a person released after six months of subjection to these conditions be -- find himself in a position of being psychologically damaged?

A My impression would be that there is a likelihood that they would, yes.

Q If a person were convicted of a crime, and ultimately released, would the fact that he had been subjected for six to nine months to conditions of this sort make it more or less likely that he would once again commit crime?

MR. FRIEDMAN: I object, your Honor. It's quite leading. If he wants to ask what would be the result, that's one thing but to lead the witness --

THE COURT: You are right. I don't know how to cure that afterward and I am not sure how convincing the answer may be, but I'll permit it.

Objection overruled.

A We don't know a great deal about what -- that is, our expertise as to what causes a man to commit a crime is not very high. However, we do know this. That there are many people that do commit crimes because of things going wrong in their personal relationships.

Now, if you incapacitate a person to behave socially by putting him in those conditions it stands to reason,I would think anyway, that he would have more trouble

with personal relations once he's out of prison and that that might lead to increased criminality.

It would be something that would have to be studied.

Q Thank you.

To return for a moment to the situation in the cells, in the -- as you have testified, the inadequacies of the personal space available, what would be -- what would be the effect of -- well, withdrawn.

In your study you found that some inmates had much larger need, greater need for personal space than some others?

A That is correct.

Q And which inmates were those?

A The more violent ones.

Q What would be the effect of a confinement in a cell of two persons, one of whom was -- fell into the catagory that you have described as more violent nature?

A He would feel more overcrowded, more pressured, would become more irritable. And obviously there would be more of a tendency for him to be violent. It's not enough to make him violent but it certainly would be -- he would have definitely more of a tendency in that direction.

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Q If by any chance two prisoners in this category were together, would there be a high likelihood of violence?

A There would be a high likelihood that the predisposition to violence would be very high, yes.

Q Assuming that inmates that you have categorized as nonviolent were confined together, would there nevertheless be a problem?

A Yes.

Q What would the problem be?

A They would have to again go through this kind of withdrawal from each other.

Q Doctor, in addition to the buffer zone, you mentioned the problem of confinement of men together for long periods of time as having some affect on latent homosexuality.

Did you mean that this would give rise to acts of overt homosexuality?

MR. FRIEDMAN: Objection, your Honor.

THE COURT: Overruled. You may answer.

A There would be a higher tendency to have actual acts of homosexuality, yes.

Q Would there be other effects?

A Well, in many indivudals the awareness, coming into awareness of latent homosexual feelings is a very traumatic feeling in itself. These indiviudals thinking of

their masculinity don't want to think of themselves as homosexual, and they will panic. They go into panic, depressions, at the emergence of these feelings. They are not used to them. They disown them from themselves. They don't think of themselves that way and they don't usually understand why they have this homosexual feeling.

Q Doctor, when you were at Springfield, were the prisoners with whom you had contact, was a high proportion of those prisoners -- withdrawn.

Did a high proportion of the prisoners with whom you had contact at Springfield have crminal records involving crimes of assault or violence or the threat of violence?

MR. FRIEDMAN: I object, your Honor.

THE COURT: No, I think he can describe them. That is not undvly leading. Overruled.

A Yes. They had all kinds of offenses.

THE COURT: The question was whether a high proportion were guilty of crimes of violence or accused of it.

THE WITNESS: A high proportion of the ones I worked with individually had histories of violence. I was involved in the care of the whole institution, also, and so I was involved in the care of others who

were not violent.

THE COURT: You had the max sec area, as I recall.

THE WITNESS: But I also participated in administrative functions of the whole.

Q In your opinion, was it necessary to confine these men under -- would it be necessary to confine men with the characteristics that you have described under the circumstances which you saw in the Brookly and Queens Houses of Detention for purposes of the security of the institution?

MR. FRIEDMAN: I object, your Honor. The man has not shown he is an expert in penology.

THE COURT: I don't think the witness has shown sufficient background in penology to deal with that opinion on the security of the institution. I don't know how I can deal with it, but I have to, but I don't believe I will get help from him.

I sustain the objection.

BY MR. GERITY:

Q Doctor, based on your experience dealing with prisoners whom you have described as having a background of violence, did you find it necessary to prevent, in attempting to prevent acts of violence, to confine them under circumstances such as the ones you saw in the Brooklyn and Queens

Houses of Detention?

A Occasionally they had to be confined in a cell where they couldn't get at some other person, that's correct.

Q Was it necessary to confine them in cells -- would you state how much of the time it would be necessary to confine a violent person in a cell?

A Usually for short periods of time; hours, usually, until they were able to get control of themselves again.

And the degree of them being out of control usually quickly improved once they were in a cell. That is, it was a very limited -- used in a very limited way.

Q Are cells such as those you saw in the Brooklyn House of Detention appropriate as normal living arrangement for the violent prisoner?

A No. I think they are psychologically destructive as a normal living arrangement.

Q Doctor, is it possible to identify the prisoners who are most likely to engage in acts of violence during their time in the institution?

MR. FRIEDMAN: Objection, your Honor.

THE COURT: No. I will let him answer.

It may be a little remote from the field of psychiatry, but it is sufficient to let me listen to

it.

THE WITNESS: I hope your Honor will become interested in psychiatry. There are several of us who have an interest in the diagnosis of dangerous prisoners, and whether or not we can come up with something from what we know about personality that is more accurate than simply a sheet that shows their arrest on it, or something like that -- we do feel at this time that we can in a scientific way make some kind of determination of dangerousness that is meaningful, that really describes individuals who are predisposed to be dangerous, not necessarily from -- they may be also criminals, but their problem is not so much of a crminal one as it is toward being explosive to other people and reacting that way toward other people.

We feel we know enough now to recognize them. We have about ten years of experience in treating them. We have recidivism of about six percent, which is amazing for a group who is thought to be so disturbed and destructive.

We do feel, in other words, that it is possible to screen, to diagnose and separate out those individuals who have a problem of repeated violence towards other peoples from criminals at large.

MR. GERITY: Thank you, Doctor. I have no further questions.

THE COURT: All right. I will take a short recess now before we proceed with the cross-examination.

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THE COURT: We will resume Valvano.

(Witness resumes the stand)

MR. FREEDMAN: Your Honor, may we approach the bench?

THE COURT: All right.

(Discussion at the bench, off the record)

THE COURT: Are you available tomorrow, Dr. Kinsell?

THE WITNESS: Tomorrow at two.

THE COURT: I think we ought to do as much as we can at this time. Let's get started.

I want to get your witnesses started tomorrow.

MR. FREEDMAN: I understand. It may not take a half-hour.

CROSS-EXAMINATION

BY MR. FREEDMAN:

Q Good afternoon, Dr. Kinsell.

Isn't it true that you testified at the Graham hearing before Judge Lasker approximately a year and a half ago?

A Yes.

Q And have you conducted any further studies in the form of recreating your body buffer zone experiment subsequent to your testimony before Judge Lasker?

A Since that time, you mean?

Q Yes.

A No, I have not.

Q Have you done any further studies on your body buffer zone theory subsequent to your testimony before Judge Lasker?

A No.

Q I think you testified that it was your finding that a violent inmate required 29 square feet of body buffer zone; is that correct?

A Yes.

Q 305. Directing your attention to the time when you gave testimony before Judge Lasker, was the following question propounded by Miss Shapiro -- it would take a series of questions.

"Question: Doctor Kinsell, in your experiment that you conducted, what did you find was the average personal space that a violent person needed, violent person needed around him?

"The Court; For what purpose?

"Mrs. Shapiro: To keep comfortable before he got acutely uncomfortable.

"Answer: 30 square feet."

Were those questions propounded to you?

A Yes.

Q Before Judge Lasker, and was that your answer at that time, 30 square feet?

A Yes. 29.3 square feet.

Q Before you testified it was 29 feet and I asked you, was that your testimony, and you said yes, before Judge Lasker, you said 30 feet. Now, what is it exactly?

A The exact figure is 29.3 square feet.

Q And don't you think that when you are dealing with 1,000 men, one foot here or there for each man comes up to quite a considerable figure, 1,000 feet?

In other words, in fact, 1,000 square feet, if I'm not correct?

A I don't understand the question.

THE COURT: You mean the difference of one square foot per person, you say, is significant?

MR. FREEDMAN: For 1,000 men, yes.

THE COURT: That is a rhetorical question. I don't think it needs to be answered.

BY MR. FREEDMAN:

Q Also, Dr. Kinsell, I think you referred to two and a half feet of distance in a circumference that a man would need to feel comfortable. What do you mean by that two and a half feet in circumference?

A The --

Q RAdius, I"m sorry, I think you did say radius as opposed to circumference. I don't want to misquote you.

A I think it's clear. I don't understand you.

Q I didn't understand, there was a quick question and an answer to the effect that on the floor a person would need two and a half feet. What would he need the two and a half feet radius for and what type of a person would need this?

A Perhaps I didn't explain -- I can explain the concept. Everyone, it turns out, has some kind of a sensitivity to crowding to others, that is, there is a space around everyone, around their shoulders, around their legs and so on, and if you get them in too close to other people or even inanimate objects for too long, they feel anxious.

So what I meant by that distance was that if you took a group, an average group of prisoners, that this would be approximately the amount of distance that they would require.

Q So that, given a prison population, generally each man would require two and a half square feet circumference?

A That's an average.

MR. GARRITY: Radius.

A Radius. Not circumference. The circumference

circumference is -- would be the whole distance around the circle. The radius is --

Q Is half the distance?

A Yes.

Q Now --

A The radius is not half the distance. The radius would be the length of the minute hand on the clock. The circumference would be the whole distance around the clock.

Q Is it diameter or radius that you would need the two and a half feet?

A Radius.

Q So five feet, diameter.

THE COURT: I thought you gave three feet and you said Baltimore had two and a half feet?

THE WITNESS: What we are doing is meaning, averaging all these, and this is rough, two and a half feet. These are all rough averages.

Q You said that that includes distance from inanimate objects, also. I think if you read back your last answer, that will reflect that you just said it includes needed distance for inanimate objects also.

A Yes, there is some data that indicates, not with prisoners but with other kinds of people, that one tends

to maintain a distance, evenfrom a coatrack.

Q When did this data become available?

A 1964.

Q When did you first become aware of that data?

A 1966.

Q Directing your attention to your testimony before Judge Lasker, again, page 307 -- I will ask you if the following questions were propounded to you and the following answers by you:

"Question: Now, would this space be roughly in a circle or could it be in any shape at all?

"Answer: It seems to be the closest analogy that I could make is that of a dome glass jar you sometimes see over a clock or piece of sculpture, that is, it is the imaginary cylinder around the body with a relatively rounded dome-shaped top.

"Question: And this would mean a circle, then, approximately on the floor?"

"Answer: That is true.

"Question: Of approximately what diameter, would you say?

"Answer: I would have to figure it out, but I think it is a little over two feet.

"Question: Diameter or radius?

"Answer: In radius, four feet in diameter."

Were those questions propounded to you and was that the answer you gave at that time?

A Yes. Also --

Q Directing your attention to the testimony you gave before Judge Lasker at page 389, I will go through the same procedure, asking you if those questions were propounded and if you gave the answers, which are as I indicate:

"Question: I believe you indicated just a moment ago that an inmate who would shy away from contact might find solace in leaning up against the wall.

Would that indicate that these men you were talking about, the men with the greatest buffer zone, would not feel threatened by a solid object such as a wall?

"Answer: Well, this is speculative because I didn't study it. The question is whether an inanimate object intruding into a person's space was the same or has the same effect as a person intruding into the person's space. The impression of many is that the sense of a solid object behind someone with a large sense of personal space is comforting. I can tell you this, however. From weekly interviews of violent prisoners who were standing in the doorways of their cells, the violent person that I saw was

backing at the end of the wall, and when he was quite violently disposed, he was not comforted by that wall, he was up against it, and if he could, he would have gone more than 20 feet back."

Is that the answer you gave, that you did not study it?

A Yes.

Q So I again ask you, Dr. Kinzel, is there specific data which supports the conclusin that an inanimate object will interfere with a person's buffer zone to the same extent that another person might?

A Not in prisoners.

Q Thank you, Dr. Kinzel.

Is it not true that the conclusions of your study, that is, that the body buffer zone of the violent person is greater than the body buffer zone of nonviolent persons requires further study before it can be given practical application in correctional institutions?

A I believe that the two studies that were done indicated that this is a significant finding.

I think what needs further study is not to demonstrate over and over again that you can demonstrate this finding, but you have to demonstrate what other factors might cause large body --

Q I'm saying, given the fact and the bare fact that violent inmates require a larger body buffer zone than do non-violent, wouldn't you agree that further study would be required before that given fact can be given practical application in a prison setting?

A No.

Q Well, doctor, isn't it true that there came a time when you in fact did recommend to the Department of Corrections that they undertake further study about the body buffer zone?

A Yes, there was.

Q And did you request funding so as to conduct this study?

A No. I requested permission to be able to conduct the study.

(continued on following page)

Q Have you ever made any recommendations to any correctional facility based on the conclusions of your study?

A I have spoken informally with the corrections people about it. I have not made any official recommendation myself.

Q Wasn't one of your recommendations that further study be conducted by New York City Department of Corrections?

A Yes.

And subsequently Dr. Hildreth did the study, so it didn't have to be done.

Q I didn't ask that question. You just told me that --

A My first study needed some confirmation and Dr. Hildreth confirmed it, and it was even better because I didn't have all my biases in it.

Q They didn't have all your biases in it?

A Any researcher that does a study has biases.

Q Dr. Hildreth's study did not have all your biases in it; isn't that correct?

A Yes.

Q To the best of your knowledge, have your findings been given practical application by correctional

authorities in the United States?

A I know of no instance where they have been given practical application. I have had many requests for my papers, but I don't know of any one instance where they have done that.

Q Thank you, if that answers the question.

A You said correctional authorities, not judicial?

Q That's correct.

A Correct.

Q And not to be repetitive, but to get a specific answer to the question, did you make any recommendations to the New York City Department of Corrections that they undertake further study of your body buffer zone theory?

A I made a recommendation that I undertake a further study.

THE COURT: Was that before the Hildreth study?

THE WITNESS: That was before. After that he did it, so it wasn't necessary.

Q When were you an instructor at New York University, Doctor?

A I have never been an instructor at New York University.

Q What was your occupation at the time that you

made this recommendation to the City of New York that they undertake further study?

A I was an instructor in psychiatry at Columbia University.

Q When was that?

A I have been an instructor since1968.

Q When was Dr. Hildreth's study conducted?

A 1971.

Q And to the best of your knowledge, when did you request or recommend to the Department of Corrections that you should be allowed to conduct further studies?

A In the spring of '69, I believe.

Q You said that Dr. Hildreth's study did not contain many of the biases that your study contained. Was one of the biases that it did not contain, the fact that he used a double-blind technique and the psychological means of measuring zone threshhold?

A He used a blind technique whereby he didn't know ahead of time who was violent and who was not. I didn't, either.

Q Have you ever?

A No, I have never. He used a more formalized interview technique to determine who was criminally violent or not.

he didn't use any different means of testing the zone threshhold; that was about the same.

Q Yes. But in other words, before you conducted your study, you had a preconception as to who was violent, whereas before he conducted his study, he had no such preconceptions?

A Correct.

Q Dr. Kinzel, which violence-prone inmates are likely to be more violent in close surroundings?

A The total group of violent inmates that I defined has this phenomenon of being sensitive to physical closeness, and most of them reported it as having had actually something to do with their fights.

Q But out of the violent prisoners, which are more likely -- I guess there are various ranges of violence, various types of violent inmates; is that not true, is there any one type that is more likely to be violent in close settings?

A Well, the more we have come to know about this, since I have done this work, and others have done other work, we have come to recognize a violent behavior syndrome. That is, there are individuals who, in addition to having their abnormal body buffer zone, have an awful lot of other features that they share together, and you can begin to diagnose and separate them out.

There are some people that are violent --

Q Let me ask you this: have you ever subdivided a group of violent prisoners?

A Yes. That is how I separated the violent from the non-violent prisoners, to begin with.

Q Once you got the violent, did you further sub-group the violent?

A No, I didn't. They seemed to share common characteristics.

Q Dr. Kinzel, I would like to call your attention to your quote of a Mr. Rubin, who is or was at the time counsel to the National Council on Crime and Delinquency. You quote him in your article on violent behavior in prisons and you quote Mr. Rubin as making the challenging statement, "Psychiatry today does not have the requisite knowledge for a screening procedure to determine who is dangerous on a broad scale. "

Do you agree with Mr. Rubin's statement?

A No, I don't.

Q Well, did you agree at the time you quoted him with that statement?

A No, I didn't.

Q I draw your attention to the examination before Judge L[illegible]r, page 383 thereof, subsequent to which

the following -- my quote was read.

Did you request that I repeat that quote or just go on from there?

THE COURT: No question. I can go on from there.

You can continue.

BY MR. FREEDMAN:

Q After that quote the question was, "Now, Dr. Kinzel, do you agree with this statement?

"The Court: With Mr. Rubin's statement?

"Mr. Cranis: Yes.

"The Witness: All right.

"Answer: I think it is increasingly acknowledged that it will be able to, and I think the study that I mentioned in Massachusetts points the way and at least to this finding, which is that as you get more expertise, the more accurate your findings are."

Were those questions propounded to you and was that your answer?

A Yes.

Q At the present time, do you serve as an advisor or consultant to any correctional agency or institution?

A No.

Q Let me ask you about your visits to the Queens House of Detention. Did you visit the Queens House of Detention?

A Yes.

Q When was that?

A On January 19.

Q I don't have a calendar. What day of the week was that?

A Saturday.

Q And at that time, how long did you spend at the Queens House of Detention?

A I believe it was about two hours.

(continued on following page)

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Kinzel-cross-Friedman

CROSS-EXAMINATION

BY MR. FRIEDMAN (Cont.):

Q And have you ever visited the Brooklyn House of Detention?

A Yes.

Q When was that, doctor?

A That was that morning and that was for three hours.

Q As a practicing psychologist, I ask you --

THE COURT: Psychiatrist, there is a difference.

MR. FRIEDMAN: Psychiatrist, I am sorry.

Q As a practicing psychiatrist, I ask you how long do you think is required in an interview of a person before you can diagnose that person, what is the minimum that would be required, would an hour be sufficient?

A For a full psychiatric evaluation, you mean.

Q Yes.

A An hour is usually sufficient, yes.

Q After one hour you can do it?

A Yes.

Q When you were at the Queens House of Detention, what areas did you visit?

A I visited the cell areas --

Q Was that on one floor or on different floors?

A -- the roof top, gym, chapel area --

Q If we can go a little slower, take them one at a time, the cell areas which you visited, was that on one floor or more than on one floor of cells?

A One floor, the double, the double tier.

Q How long did you spend in that cell area?

A 20 minutes.

Q 20 minutes?

All right, then where else did you go?

A The roof.

Q How long did you spend up there?

A 5 minutes.

Q Where else, doctor?

A The chapel area.

Q How long in the chapel area?

A 5 minutes.

Q Any other specific areas?

A I saw the dormitory.

Q Was anyone --

A We saw --

Q How long did you spend in the --

A The admitting area, the receiving area.

Q How long did you spend in the dormitory area?

A 10 minutes.

3 Kinzel-cross-Friedman

Q And how long did you spend in the receiving area?

A 10 minutes.

Q And any other areas?

I guess a lot of your time was spent traveling from one area to another waiting for elevators; is that correct?

A Yes.

Q Were there any other areas which you visited?

A I am trying to recall.

I don't recall any other specific areas at the moment.

Q And at the Brooklyn House of Detention, can you tell me where you visited, one step at a time?

A Yes, there I spent more time, the 9th floor, the general population floor, again the cell areas, the halls and the day rooms, that is where we spent most of the time.

Q Now, how long did you spend in that cell area?

A Oh, at least an hour.

Q Now, let me ask you this before we go on with that question:

When you were in these various cell areas I imagine a lot of your time was taken up doing measurements of the cell areas, of the day room areas, of the lock out

area, you have given some figures as to the size, did you do those measurements yourself?

A Yes.

Q And when you were at Queens, how long did it take you to make those measurements? You said you were in the cell area for 20 minutes, was it the better part of the 20 minutes?

A It doesn't take me an hour to measure the cell.

Q I am just talking about Queens, when you were in the cell area for 20 minutes, did it take you the better part of the 20 minutes?

A It took 5 or 10 minutes to do the measurements.

Q And I guess that part of that 20 minutes, well, the remaining 10, was spent walking from the cell area over to where the lock out area is and then over to where the day room is; is that correct?

A We spent a good deal of time talking to the deputy wardens, we spent some time talking to the inmates --

Q This all may be interesting --

A There was discussion amongst --

Q Dr. Kinzel, please, I am asking you --

A I don't want to leave the impression --

Q I know what impression you would like to leave.

THE COURT: Well, just a moment, one person at

a time.

MR. FRIEDMAN: Will you instruct Dr. Kinzel to answer my questions, please, your Honor, and not to volunteer information.

I am asking specifically how much time he spent measuring --

THE COURT: If you want to get those trivia, I will let the witness answer the way he sees fit.

A What I mean --

THE COURT: No, just wait until there is a question.

THE WITNESS: Excuse me, excuse me.

BY MR. FRIEDMAN:

Q Now, you were on the floor 20 minutes, the cell area, 10 minutes of that time was taken up measuring the floor area, and how much of that time was taken up, in your estimation, walking from one cell area that you measured to the day room which you measured, or I guess in what order did you measure, what was the first thing that you measured when you walked in?

A I had a tape measure with me, I measured the cells, a regular carpenter's tape measure, I measured the cell areas.

Q That was the first thing?

A The bench, the fixings in them that took up the space, I measured the hall width and we were able to calculate the hall lengths by -- they have regular bars that go down, you just add up the bars and knowing how far one bar is from another you can calculate roughly. This was not an architect's survey.

Q Right --

THE COURT: Dr. Kinzel said he had to leave at 4.

Do you have considerable left.

MR. FRIEDMAN: Yes, I do.

THE COURT: I'm afraid we will have to ask you to come back at 2:30 tomorrow, Dr. Kinzel.

THE WITNESS: Thank you.

THE COURT: Thank you.

Good night.

(The witness was excused.)

(Continued on next page.)

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THE COURT: Is there anything else we can do this afternoon.

MR. MUSHLIN: Yes, your Honor, we have one inmate who will testify.

THE COURT: All right, put him on.

MR. MUSHLIN: Mr. Robert Finley.

R O B E R T F I N L E Y , called as a witness on behalf of the plaintiff, having been duly sworn by the Clerk of the Court, testified as follows:

THE COURT: Go ahead.

MR. MUSHLIN: Your Honor, if I may, this witness would testify to substantially the same matters that were testified to by the other witnesses concerning the affects of overcrowding, specifically with regard to privacy, with regard to the lock in hours and with regard to eating in the cell area.

THE COURT: Is it your purpose to bring it out again or to just say that it would be cummulative and that you would rather that I accept that that that is what he would testify to.

MR. MUSHLIN: There is another specific matter that he can offer testimony on.

THE COURT: Let us go to the specific other matter.

(Continued on next page.)

2 Finley

DIRECT EXAMINATION

BY MR. MUSHLIN:

Q Mr. Finley, how old are you?

A 23.

Q Are you married?

A Yes.

Q Do you have any children?

A Yes.

Q How many?

A Three.

Q What are their ages?

A 2, 3 and six months.

Q Where do you live?

A New Jersey, Bayville.

THE COURT: Where?

THE WITNESS: New Jersey.

THE COURT: Sayville?

THE WITNESS: Bayville.

THE COURT: Bayville, New Jersey.

Q Have you ever been convicted of a crime?

A No.

Q Now, Mr. Finley, are you presently confined in the Queens House of Detention?

A Yes.

3 Finley-direct

Q Are you being held for trial?

A Yes.

Q What is the charge?

A Robbery 1.

Q When were you arrested?

A April 11.

Q 1973?

A 1973, yes.

Q Has bail been set in your case?

A Yes.

Q Can you tell the Court the bail?

A It is $2,000, bond, and $1,500 cash, it was just reduced.

Q It was reduced?

A Yes.

Q To what?

A To that figure I gave you.

Q I see.

Now, how long have you been confined in the Queens House?

A A little over 8 months.

Q And were you confined in ay other institution prior to that time?

A Yes.

4 Finley-direct

Q Where?

A Brooklyn House of Detention.

Q For how long were you confined there?

A A little over a month.

Q Was that on the same charge?

A Yes.

Q And you were transferred from Brooklyn to Queens?

A Yes.

Q Now, Mr. Finley, have you had a cell-mate while you have been confined in the Queens House of Detention?

A Yes.

Q How many?

A Approximately a little over 10, 10.

Q Now, are you currently employed on the trial help?

A Yes.

Q How long have you been so employed?

A A little over 3 months.

Q Prior to the time that you were so employed, were you subject to the same lock in hours as the general population?

A Yes.

Q Are you now subject to those hours?

5 Finley-direct

A No.

Q What is your lock in schedule now, for what period of time were you locked out?

A I am locked out when prisoners are locked in because for their feeding time, because I want to help.

Q Are you locked in during the evening at 10 o'clock?

A Yes.

Q And you are locked back ou[illegible]e morning; is that correct?

A Yes.

Q And you stay up performing your duties; is that correct?

A Yes.

Q Now, Mr. Finley, have you ever been involved in a fight in the Queens House of Detention?

A Yes.

Q Can you tell the Court what happened?

A I had a cell-mate and I locked in --

Q Will you speak louder?

A I had a cell-mate and I locked in lower C5 at that time, and me and the cell-mate, we didn't get along that well, so I just more or less stayed away from him and he stayed away from me. One day he like had spread a rumor

around that he was going to wait until I went to sleep, and, you know, mess me up or something when I went to sleep. So that night, when we went back to the cell -- and I didn't pay much attention to it, you know, I just figured it was a bunch of talk -- I went to sleep and before I went to sleep he was on his bunk. He slept on the top bunk and I was on the lower. So he was in his bunk when I got there and I lay down and went in my bunk.

So I was asleep and all of a sudden like I felt this guy kicking me in the throat and in the chest and in the head, and just, you know, woke me up and we were fighting in the cell, and then the officers came about 10 minutes later, we were still fighting, and broke the fight up, opened the cell and sent us both to the bing.

Q Who notified the officers?

A A few of the inmates were yelling there was a fight in the cell.

Q Now, you said that there had been a rumor that he was out to get you?

A Yes.

Q Did you notify the officers?

A No, I didn't pay much mind to it because I figured it was just a bunch of talk, you know.

Q Did you ask that you be transferred to another

cell?

A No.

Q Why not?

A Well, at that time all the cells were occupied and I could see no reason at that time really to be transferred, it was just a matter of talk, you know.

Q Did this fight occur after you had been locked in the cell, were you locked in the cell?

A Yes, when we were locked in.

Q Did you require medical attention?

A Yes.

Q What kind of medical attention was it, what were your injuries?

A My gland has swollen up on one side and I was coughing up blood and everything, and I had injuries on my chest, pains in my chest where I was kicked. He had shoes on when he was kicking me.

(Continued on next page.)

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Q I see.

Now, you said after the officers came, you were taken down to the bing?

A Yes.

Q What happened?

A Well, they separate you and lock you in separate cells by yourself and at that time, the nurse came in to see me and I went downstairs and I had medical attention. I stayed there until the next day.

Q What happened then?

A He spoke to the "dep" and the "dep" asked him what happened.

Q You say the "dep," do you mean the deputy warden?

A The deputy warden.

Q YEs, go ahead.

A And he asked what happened and he explained that it was his fault and everything, and so they sent me back to my floor and they put him in the bing for five days.

MR. TOBIAS: I object, your Honor, I object to his characterization of the other inmate's statement.

THE COURT: Overruled.

BY MR. MUSHLIN:

Q Now, what was this man's name that you assaulted?

A Harry Pennington.

Q How long did the entire incident take?

A What do you mean, how long did it take?

Q I mean, from the time Mr. Pennington assaulted you until the time that the officers rescued you?

A It took approximately ten, 15 minutes.

Q In what location were you locked in, at that time?

A Five, lower C-5.

Q How long had he been a cellmate of yours?

A Approximately a month.

Q Now, Mr. Finley, do you recall that on January 16, 1974, an examination before trial was conducted at the Queens House of Detention?

A Yes.

Q And that you were asked questions by Mr. Freedman?

A Yes.

Q Now, were the following questions asked and did you give the following answers:

MR. FREEDMAN: What page, please?

MR. MUSHLIN: Page 13.

MR. FREEDMAN: Your Honor, I object. Obviously he is impeaching his own witness or pointing out

inconsistencies, which is certainly not proper procedure.

THE COURT: I think that is right.

MR. MUSHLIN: Well, your Honor --

THE COURT: Just ask him to explain his testimony at the deposition.

MR. FREEDMAN: If he is impeached, he can explain it, but --

MR. MUSHLIN: This is not for the purpose of impeaching; it is not for the purpose of impeaching.

THE COURT: Normally you can't be the testimony of your own witness, but if you want to explain something, I will let you do it, though.

The rules in the Federal court are different than in the State.

Go ahead.

MR. MUSHLIN: I have no further questions.

THE COURT: All right.

Any cross-examination?

(continued on following page)

CROSS-EXAMINATION

BY MR. TOBIAS:

Q With the court's indulgence, I just want to find the pertinent portions.

THE COURT:Yes.

Q Mr. Pennington, did you testify that --

A I'm not Mr. Pennington.

Q Excuse me. Withdraw that.

Mr. Finley, did you testify that Mr. Pennington was your cellmate for about a month prior to the time you engaged in this altercation?

A Yes.

Q I'd like to refer counsel to page 13.

Mr. Finley, do you remember Mr. Freedman, that gentleman over there, conducting a cross-examination with you?

A Yes.

Q I'm going to read to you a series of questions and answers and I"d like you to know -- you to note to the Court whether these were the questions posed and whether these were the answers that you had given.

"Question: What do you mean, you would have moved?

"Answer: If there was another cell opened, I

would have asked the officer to move me.

"Question: But there wasn't, so you didn't ask?

"Answer: Like, this only came around in one day.

"Question: He came in one day and that night you got into a fight?

"Answer: Yes."

Was that the testimony you gave to Mr. Freedman at the examination before trial?

A Yes, but I didn't understand on the question, you know, like --

Q I'm --

A Came in one day or --

THE COURT: All right. We will let Mr. Mushlin bring it out later on.

Q Mr. Finley, have you applied for any of the programs that have been offered at the Queens House of Detention?

A No.

Q Is your failure to apply for these programs due to your lack of interest?

MR. MUSHLIN: Your Honor, I object to that.

THE COURT: Overruled.

MR. MUSHLIN: Not on direct examination.

THE COURT: I do not care.

BY MR. TOBIAS:

Q Was your -- you did not apply for these programs because you weren't interested in them?

A No.

Q You did not apply for these programs because you were too busy with court-related matters?

A Not more or less court-related matters. I wanted help --

Q You did not apply for these programs because you were too busy with your going to court, meeting your attorney, that sort of thing?

A No.

Q I'd like to direct counsel's attention to page 5 of the examination before trial.

Mr. Finley, I'd like you to note whether or not these questions were posed to you by Mr. Freedman at the examination before trial, and I'd like you to indicate after I read them whether or not these are the responses that you gave:

"Question: Are you in any of the programs offered by the institution, such as arts and crafts?

"Answer: No, I'm in none of them. As far as I

know, there are none.

"Question: There are no programs at all?

"Answer: As far as I am concerned, there is no programs.

"Question: What do you mean by that?

"Answer: Because, you know, there is really no room for all of these programs that they have, they are supposed to have. I have never participated in any of them.

"Question: Did you ever apply for them?

"Answer: I was going to go into -- in arts and crafts, but I never got around to it because I had been going to court and stuff."

Were these the answers that you gave to Mr. Freedman?

MR. MUSHLIN: I'm going to ask for clarity, that other portions of that --

THE COURT: No. I will let him answer this one part at a time.

THE WITNESS: Yes.

MR. MUSHLIN: Your Honor, at this time, may --

THE COURT: You have redirect.

MR. MUSHLIN: All right.

BY MR. TOBIAS:

Q Mr. Finley, did you ever ask any corrections

officer to enroll you in any of the programs in the institutions?

A No.

Q Mr. Finley, are you presently a food server at the institution?

A No, I don't serve food.

Q Well, are you presently enrolled in the food program, so to speak?

A Yes.

Q Now, does this -- does your participation in this program give you additional lockout time?

A Yes.

Q Now, Mr. Finley, have you ever been in a single cell during your stay at the institution?

A I have never been in a single cell.

Q I mean, in a cell without another individual?

A Yes.

Q You have.

Mr. Finley, did you ever -- while you were in a single cell, what I characterize as a cell without another individual in that cell, while you were in this status, did you ever request to be transferred into a cell where there was in fact another individual?

A Yes.

Q Mr. Finley, are you aware that in the report submitted to the corrections officers about the altercation you had with Mr. Pennington, Mr. Pennington stated that you were "harassing" him all day? Was that not Mr. Pennington's version of it, to your knowledge?

A I don't know what he had said, you know. He just said it was his fault; that was all.

He might have said something after I was gone; I don't know.

Q Did you see the corrections report?

A No.

Q I see.

Mr. Finley, do you feel that a good portion of the tension existing at the Queens facility is due to racial hostility on the part of the inmates?

MR. MUSHLIN: I'm going to object to that, your Honor. He's not competent to --

THE COURT: This is cross-examination. I will let him ask.

THE WITNESS: Some. You know, not all.

BY MR. TOBIAS:

Q Not much?

A All depends on the individuals.

Q Do you feel that -- I'm going to repeat the

question.

Do you feel that a good portion of the tension existing at the institution is because of the hostility, the racial hostility, specifically, existing among the inmates?

A Some.

Q Some? How would you characterize it? A lot, a little?

MR. MUSHLIN: Your Honor, that's the third time. He said, "some."

THE COURT: All right.

MR. MUSHLIN: The question has been asked and answered.

THE COURT: No. He is asking for a characterization. He may answer, if he can.

Can you characterize it, Mr. Finley?

THE WITNESS: A little.

BY MR. TOBIAS:

Q A little? I'd like to direct counsel's attention to page 14.

Mr. Finley, I'm going to read you a question posed by Mr. -- that I think was posed by Mr. Freedman at the examination before trial, and I'd like you to identify, to see if this was the question that was in fact posed, and if this was the answer that you gave.

"Question: The tension was the only emotional upset that you suffered as a result, I guess, from apprehension at meeting new people?

"Answer: No, you know, it is just a lot of tension and everybody being around, you know, in a cell with these guys. You don't know what they are, crazy, half of them, or what the problem is with them. A lot of people come in with attitudes and stuff like that, especially some inmates are black and some inmates are white and, you know, they don't get along with white guys, you know, and some of the white guys don't get along with black guys."

Was that your testimony?

A Yes.

(continued on following page)

CROSS-EXAMINATION

BY MR. TOBIAS (continued):

Q Have you ever seen any fights in the areas away from the cells?

A Yes.

Q In other words, you've seen -- the fights that you have seen have not been exclusively restricted to the cell areas?

A What do you mean by --

Q In other words, the fights that you saw have been away from -- have been away from the cell areas, as well as in the cells?

A Yes. Only outside of the tiers. That's the only place.

Q Have you ever seen any correction aides on the floor?

A Yes.

MR. TOBIAS: I've no further questions.

THE COURT: Any redirect?

MR. MUSHLIN: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. MUSHLIN:

Q Mr. Finley, when the -- when Mr. Tobias read to you from your examination before trial, you were discussing the time period about your fight with Mr. Pennington.

One of the questions he asked was, "What do you mean, you could have moved?"

"Answer: If there was another cell opened, I would have asked the officer to move me.

"Question: But there wasn't, so you didn't?

"Answer: Like this only came around in one day."

Now, Mr. Finley, what did you mean by that, this only came around in one day?

A Like, he locked in my cell for about a month and he just put this attitude on in one day.

Q I see.

A Before we had locked in.

Q So you are referring to the attitude that Mr. Pennington had towards you, not the length of time you had been confined within -- with him as a cell mate; is that right?

A Yes.

Q Now, after a person is sent to the bing, a hearing is had; is that correct?

A Yes. The deputy warden talks to you.

Q And he finds out whether you are responsible for what you are charged for; is that right?

A Yes.

Q And what happens if you are found guilty?

A Well, he -- he can put you in the bing or send you to another floor. Most likely, he'll put you in the bing for a few days.

Q After you served your time in the bing, where do they transfer you?

A They generally transfer you to a different floor from what you were on.

Q After your fight with Mr. Pennington, you immediately were taken to the bing; is that right?

A Yes.

Q And you met with the deputy; is that right?

A Yes.

Q And then what happened?

A Well, Mr. --

Q Excuse me. He talked to you about the incident, the deputy? Did the deputy discuss with you the incident and what had happened?

A Yes.

Q And what happened after that discussion?

A Well, he made the decision to send me back to the floor and he put him into the bing.

Q All right. How many people work on the trial help on your floor?

A 15.

Q Now, in discussing -- in your examination before trial, was this question also asked and did you give this answer? Page 5.

"So your time has been pretty much" --

MR. FREEDMAN: I object, your Honor.

THE COURT: What is the purpose of this?

MR. MUSHLIN: Your Honor, this was to clarify the questions that Mr. Tobias was asking about --

THE COURT: Are they on the same page from which he read?

MR. MUSHLIN: Yes. Just a continuation.

THE COURT: All right.

MR. MUSHLIN: Continuing with the next question after Mr. Tobias left off.

THE COURT: All right.

MR. MUSHLIN: Just that question.

THE COURT: Go ahead.

BY MR. MUSHLIN:

Q The question is, "So your time has been taken up pretty much with court appearances and counsel visits?

"Answer: I wouldn't say that. I've been in court a matter of five times. Since I've been here, mainly I'm on my own floor, where I lock in."

I have no further questions.

THE COURT: Did you --

Q Did you give --

A Yes.

Q Was that question asked and did you give that answer?

A Yes.

THE COURT: All right. Anything more?

MR. MUSHLIN: Excuse me, your Honor, if I may have just a --

THE COURT: All right.

MR. MUSHLIN: One more question.

BY MR. MUSHLIN:

Q Mr. Finley, there came a time that you -- that you were housed by yourself in a cell; is that right?

A Yes.

Q And you requested that you be transferred from that?

A Yes.

Q Why did you make that request?

A Because the springs on the bed were collapsed, like, you couldn't sleep on the bed, and the other bed that was in there was broken, too.

Q I see.

Now, you requested -- whom did you request the

transfer from?

A The officer on the floor.

Q I see.

And how long did it take -- was that request honored?

A Yes.

Q How long did it take?

A I think I moved the same day or the next day. I'm not quite sure.

Q One further question.

Your fight with Mr. Pennington, do you recall when that occurred?

A It's near the end of the summer, I think.

Q Do you recall what the weather was like on that day?

A It was warm on the inside; I know that.

MR. MUSHLIN: No further questions.

RECROSS-EXAMINATION

BY MR. TOBIAS:

Q Now Mr. Finley, how much time did you spend in the single cell?

A About a month or two.

Q More specific. A month or two months?

A About to -- two months.

It's not a single cell. It's two-man cell but with one of the beds broken.

Q Now, Mr. Finley, when you made the request to be transferred, did you know that there was a great likelihood that you would be put in with a cellmate, as opposed to being in a cell by yourself?

A Yes, but at that time I had no choice because the bed was broken.

Q Now, Mr. Finley, after you had this fight with Mr. Pennington and after Mr. Pennington had served his time in the bing, did he resume being -- did he resume his status as your cellmate?

A No. Still --

Q In other words, the correction officers and the administration solved that problem by separating both of you?

A Yes.

MR. TOBIAS: No further questions.

THE COURT: Did you get another cellmate?

THE WITNESS: Yes. They transferred into another cell because the beds were broke.

THE COURT: No, after you went to the bing and were released, did you get another cellmate?

THE WITNESS: I believe -- I believe so. I'm not

quite sure.

THE COURT: All right. Anything else?

MR. MUSHLIN: No, your Honor.

THE COURT: You can step down. Thank you.

Any other testimony for the plaintiffs?

MR. HERMAN: Nothing further for today, your Honor, except --

THE COURT:Is there anything more you are going to offer?

MR. HERMAN: Yes, your Honor.

THE COURT: Because the doctor has not finished his testimony yet.

MR. HERMAN: Aside from that, your Honor, on-- I have the photographs to offer then when they are delivered. That should be any day. We should -- or we could take it up on the day when you hear Dr. Cooper, in February, for the defendants.

THE COURT:I did not know about that. We will see about that.

Are you ready in the morning, Mr. Freedman?

MR. FREEDMAN: We will be, your Honor.

THE COURT: All right.

Without having the plaintiffs formally rest, I will direct that we start on the defendants'

testimony in the morning.

MR. HERMAN: Thank you.

MR. FREEDMAN: Thank you, your Honor.

THE COURT: Ten o'clock tomorrow.

MR. HERMAN: Your Honor, excuse me. Mr. Foy asked if he could address you. He said it would just take a minute.

THE COURT: All right.

MR. FREEDMAN: I would object in advance to this, your Honor.

THE COURT: Well, it is a little informal proceeding in that respect.

MR. FOY: I have copies of letters. I have made up one for the District Attorney, one for the Legal Aid.

MR. FREEDMAN: We object.

THE COURT: I cannot hear.

MR. FOY: I have copies of the letter. I have made one up for the District attorney , one for Legal Aid. If you want to accept them, if not, it's up to yu.

THE COURT: I think I ought to stick to legal evidence in this case, Mr. Foy. You have testified already.

If you have a letter, show it to Mr. Garrity

and let him decide whether I need it. 83a

MR. FOY: All right.

THE COURT: Please.

Good night.

(Whereupon, a recess was taken until January 24, 1974, at ten o'clock a.m.)

* * * * *

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

RALPH VALVANO, DONALD LEROLAND and JONATHAN WILLIAMS, individually and on behalf of all other persons similarly situated,

Plaintiffs,

-against-

GEORGE McGRATH, Commissioner of Correction for the City of New York; JOHN V. LINDSAY, Mayor, City of New York; JOHN P. KENNEDY, Warden, Queens House of Detention for Men; ALBERT OSSAKOW, Acting Warden, Queens House of Detention for Men; THOMAS J. MACKELL, District Attorney, Queens County; individually and in their official capacities,

Defendants.

70-C-1390

----------x

United States Courthouse
Brooklyn, New York

January 24, 1974

B e f o r e:

HONORABLE ORRIN G. JUDD, U.S.D.J.

Appearances:

LEGAL AID SOCIETY,
Attorneys for the plaintiffs

BY: STEVEN A. HERMAN, ESQ.,
MICHAEL B. MUSHLIN, ESQ.,
PIERCE GERITY, ESQ.,
M. VICTOR GEMINIANI, ESQ.,
Of Counsel

ADRIAN P. BURKE, ESQ.,
Attorney for the City of New York

BY: DONALD J. TOBIAS, ESQ.,
-and-
JEFFREY FRIEDMAN, ESQ.,
Of Counsel

RONALD ZWEIBEL, ESQ.,
Director of Legal Affairs
New York City Department of Corrections

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THE COURT: Bring in the plaintiffs.

I note that the Queens plaintiffs are here now and I think we would be justified in our proceeding.

I think Mr. Smith has been delayed and I trust that he will be here in a short while.

MR. HERMAN: Thank you, your Honor.

THE COURT: All right.

Now, Mr. Friedman, you may proceed. I am taking your case out of order, because the witness you are cross examining won't be available until this afternoon.

MR. FRIEDMAN: That is right, your Honor.

Your Honor, in the light of that, I wonder if this would be an appropriate time, or at a later time would be an appropriate time for a motion for a directed judgment for failure to establish a prima facie case.

THE COURT: Later.

MR. FRIEDMAN: Okay.

Then, I would like to call Warden Rubin to the stand.

(Continued on next page.)

A R T H U R R U B I N , called as a witness on behalf of the defendant, having been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. FRIEDMAN:

Q Warden Rubin, can you please tell the Court where you are employed?

A At the Queens House of Detention for Men.

Q In what capacity?

A I am the Warden of that institution.

Q And how long have you been the warden of the Queens House of Detention?

A Since October 2 of 1973.

Q And before that, where were you employed?

A At the Manhattan House of Detention.

Q And what was your position there?

A Deputy Warden.

Q And how long were you Deputy Warden at the Manhattan House of Detention?

A From April 2 of '73, to October 2 of '73.

Q Now, when you say -- how many, how many Deputy Wardens were there at the Manhattan House of Detention for Men?

A One.

Q And in the order of rank in that institution, where would the Deputy Warden be in?

A He functioned as the second Commanding Officer, the second in command.

Q So then, there were other Assistant Wardens?

A Yes, Assistant Deputy Wardens.

Q Assistant Deputy Wardens.

Thank you.

And prior to your having served as Deputy Warden at the Manhattan House of Detention, where were you employed?

A At the Brooklyn House of Detention as Deputy Warden.

Q And for what period of time?

A From December 2, 1971 until April, 1973.

Q And prior to that time, how were you employed?

A As Assistant Deputy Warden at the House of Detention, from July of 1969 until December of 1971.

Q And prior to that?

A I was Captain in charge of the Brooklyn Court Detention Pens, the Brooklyn Court Detention Pens, and that takes care of the Supreme Court, and the Criminal Court Detention Pens in Brooklyn, and that was from August of 1962 until July of 1969.

Q During all of that time, were you an employee

of the New York City Department of Correction?

A I was.

Q How long have you been employed by the New York City Department of Correction?

A Twenty years.

Q Have you taken any courses in penology?

A Yes.

Q Would you please describe those for the Court?

A I took several courses at New York University under a program that was the forerunner to the John Jay College of Criminal Justice.

In 1959, I enrolled in that course, and I satisfactorily completed both courses in Correctional Institution Management.

Q Did there come a time when you took a course given by the Federal Government?

A Yes, I took two courses by the Federal Government, one on prison management, and one on jail management.

Q Have you ever taken any in-service training?

A Yes.

Q Would you tell us when and where?

A I have participated in three in-service training courses for the New York City Department of Correction.

MR. FRIEDMAN: Your Honor, at this time, I move that the Court accept Warden Rubin as an expert.

MR. HERMAN: Objection, your Honor.

THE COURT: Do you want any voir dire?

MR. HERMAN: Yes, your Honor.

VOIR DIRE EXAMINATION

BY MR. HERMAN:

Q Warden Rubin, you said you took several courses at NYU, what were those courses?

A Correctional Institution Management.

Q How long did they last?

A One year.

Q Each course lasted one year?

A Both courses, each course was for six months.

Q How many times a week was it held?

A Twice per week.

Q Have you published anything in the field of correction work?

A No.

MR. HERMAN: I have no further questions, your Honor.

THE COURT: Well, I am going to receive his testimony as an expert. He certainly knows more about it than I do, and as I said, with respect to plaintiffs' experts, I am not bound to accept his testimony, I will determine what weight to give to it.

BY MR. FRIEDMAN:

Q What are your duties and responsibilities as Warden in the Queens House of Detention?

A As the Warden, I am charged with the responsibility for running the Queens House of Detention for Men in accordance with the rules and regulations of the Department of Correction, and to effect policy as set forth by the Commissioner of Correction, and to protect the safety, health and welfare of all of the persons incarcerated in that place, and of the staff.

Q Warden Rubin, did you know what the census of the Queens House of Detention was as of yesterday?

A 670.

Q What is the capacity of the institution, the stated capacity of the Queens House of Detention?

A 520.

Q And if you happen to know, how many inmates were incarcerated in cells, which contained two inmates?

A I don't have the exact figures with me, but I would say that right now, most of the inmates are in double cells.

Q Does your institution have any programs or services available for the inmates, particularly the inmates awaiting trial and incarcerated therein?

A Yes.

Q Could you please describe those programs for the Court, indicating the number of inmates serviced by those programs, their capacity for the servicing of the inmates by those programs, and provide a short description of each of those programs?

A Well --

THE WITNESS: Your Honor, may I look at these notes?

THE COURT: Yes, surely.

If you look at them, the plaintiffs' attorney can look at them, too, but I am presuming that there would be nothing that you would be ashamed to show him.

THE WITNESS: No.

A First, we have a basic social servicing program, which provides for the contact of the inmates with the outside, and to help them with in-house problems, which is an inmate's Court case, his problems in contacting his family, and most of these social services are provided by the Correctional Counselling Service, which is formally known as the Correction Aid Program, and we have some 40 Correction Aid personnel assigned to the institution, and their function is to aid the inmates on the housing floors with telephone calls,

they make the telephone calls for the inmates to their families, attorneys, friends, they will help the inmate and inform him of the other programs available in the institution, they will help him with problems that he has with his commisary fund, perhaps, or clothing from the outside; they will also keep him informed of the institutional rules and regulations, they will provide the necessary contact if necessary, that is if an inmate has no relatives here, for instance, then they will visit some friend of his to get him clothing, or to bring him some necessary item which is permitted by the rules and regulations.

They will also make phone calls to contact outside drug programs, they will arrange for interviews with the mental health unit in our institution, and generally provide a general social servicing program.

(Continued on next page.)

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Q Well, how many inmates are serviced by these 40 correction agencies?

A The entire institution, the entire 670 inmates would be serviced by them at any given time.

Q And are there any other social services that would help inmates with problems outside the institution?

A Yes, we have some community based programs that come in from the outside that provide some educational and counseling and social service programs. We have a clergy, a voluntary clergyman who comes in to the institution and aids the inmates with some of their problems --

Q Before we go to the clergy program, I had asked are there any specific programs in there as has been testified to the effect that one inmate was held by a certain social worker on the recreational floor.

Now, could you explain where those social people, those social workers come from?

A Yes, they are community based programs and community volunteers that come in to the Queens House of Detention, one of them is the Ethical Culture Society of Queens, on Wednesdays and Thursday they do group counseling, they aid inmates with some of their problems, they have an art class which they teach the inmates and also they give them educational courses in other areas such as basic

reading. They even give sociology courses if the inmates are interested in them.

Q Now, where does the Ethical Society program meet?

A They meet on the 7th floor of the Queens House of Detention.

Q Could you describe the room in which they meet?

A Well, it is a floor space of about, I would say, 50, about 50 feet by 30 feet, an open type like a classroom area, and we have chairs and tables provided there, and this area also serves as the institutional library --

THE COURT: Excuse me a minute.

Just a minute.

I think Mr. Smith is here.

Well, bring him in.

(Mr. Smith then took a seat in the courtroom.)

BY MR. FRIEDMAN:

Q How many days a week does the Ethical Culture Society hold its program?

A 2 days per week.

Q And how many inmates are serviced by the Ethical Culture Society?

A Well, they have an average of 18.

I have the figures for the last month.

The Ethical Culture Society for the month of December had 81 inmates in their program.

Q Now, when you say 81 inmates, does that necessarily mean that 81 different people were up there?

A No, it could be the same fellow going up there two or three times, but there is a turnover, there is a turnover, some of the inmates lose interest, some of the inmates may not have had that exact thing in mind when they went up there, some go to court and as a result their cases come up in court and they drop out of the program a few days and then go back.

We compile statistics, we take the total number that was seen each day and for that month.

Q But it could be that a man would be included in those statistics possibly 8 times if he went twice a week?

A Yes.

Q That is just to clarify that?

A Yes.

THE COURT: He probably didn't go 8 times in December with the holidays; is that right?

THE WITNESS: Well, according to the report that they gave, they take a count and they are

required -- we have -- we have a regular sign-in sheet and they claim they served 81 inmates in the month of December, and in the previous month, in November, they serviced 70 inmates.

Q Is there a waiting list to get into the Ethical Culture Society program?

A Yes, there is approximately a three week waiting list. The head of the program requires to interview the inmate first and get an idea of what they are interested in.

I have spoken to him a number of times, he tries to get the general trend of what the inmates interests are, and then tries to get a volunteer who can provide that service.

Q All right.

Do you have any medical services in the institution?

A Yes.

Q How many doctors, if any, do you have in the institution?

A Well, we have two full time doctors who work Monday through Friday. By full time, this means they put in an average of 20 hours per week.

Then we have 8 part time [illegible]ors who provide

us with around the clock coverage.

MR. HERMAN: Objection, your Honor, the medical is totally irrelevant, it is hardly an activity.

THE COURT: I think it has something to do with the extent to which people may suffer from the conditions there and even the overcrowding.

I will permit it.

MR. FRIEDMAN: Your Honor, we are not offering this as to the quality of the medical services, we raise it as a question not in dispute, we are just trying to show the extent of the doctors that we have.

BY MR. FRIEDMAN:

Q Now, Warden, so these doctors, then, are on duty Monday through Friday?

A Yes -- no. We have 7 day a week coverage. We have two full time doctors, one is the chief physician and one is the afternoon chief physician, and then we have 8 other doctors who are assigned on a rotating basis, they cover 7 days a week, and 24 hours a day.

If an inmate is sick at any time in the day or night, we have a doctor available in the institution and he usually has two nurses with him. We have 16 nurses assigned to the institution as well.

Q How many dentists?

A We have two part-time dentists, they are known as procession dentists, and they work Monday through Friday at varying times.

Q How many inmates are serviced on a daily basis by the doctors and the nurses?

A The clinic services, I would say, between 60 and 70 per day. It is, the actual clinic is on the housing floors.

We have some, approximately 150 inmates who are serviced by daily medication that is distributed by the nurses on the doctors' orders for various conditions, chronic conditions, that don't require hospitalization, like epilepsy or asthma, asthma, heart condition, circulatory problems, you know, various different ailments that they have which require daily medication.

Q How many inmates are serviced on a daily basis by the dentists?

A Approximately 10 per day.

Q And did there ever come a time when an inmate was seeking care from a doctor that he would be separated by a screen while he was receiving attention from the doctor, the inmate from the doctor by a screen?

A No.

Q Would he always be face to face with the

doctor with nothing between?

A Yes, yes.

Q Thank you.

Do you have any educational programs in the institution?

A We, yes, we have some educational programs.

We have a full range program for high school equivalency which is given by a qualified -- by three qualified teachers of the Board of Education, and they meet on Tuesdays and Thursdays, and all inmates are eligible for that.

They have an average class load of 23, and to date, since the program started, we have given out 1,600 high school equivalency diplomas to inmates of the Queens House of Detention.

Q How long has that program been in existence?

A Since 1972.

Q '72?

A Yes.

Q So in two years you've given out 1,600 high school equivalency diplomas to inmates?

A Right.

Q Is there a waiting list to get into that program?

A There is about a two and a half week waiting list.

Q Thank you.

Are there any other educational programs?

A Yes, we have English as a second language, which is given to Spanish-speaking inmates having difficulty with English. We have a qualified teacher from the Board of Education, Mr. Cesaro Borrerro, he is also in on Tuesdays and Thursdays.

Q That is on the same day that the high school equivalency program is given?

A Yes, they all come in evenings, it is an evening program.

Q How many inmates are serviced by this English program given to Spanish-speaking inmates?

A Approximately 10, the average is 10.

Q Is there any waiting list to get into that program?

A No, there is no waiting list.

Q Are there any other educational programs?

A We have an art, an art program and a drama program.

The art program is in conjunction with the Ethical Culture Society, they have an agreement with the

Metropolitan Museum of Art, and they bring art instructors with them when they come in, and they have classes in art instruction for those inmates who are interested in that.

And we also have a drama class that is given by the New York City Street Theatre for the Forgotten, which also provides us with shows, and this is given by a former actress by the name of Margaret Kimball, and she comes in on Sundays, and she has a class of approximately 7.

Q And what -- for what period of time on Sunday is she there?

A 1 to 2 and 2 to 3.

Q So she is there from 1 to 3?

A 1 to 3, but --

Q She has two different classes?

A Two different groups that meet.

Q But the total is 6 for those?

A Each is 6, it would be 6 for each of those classes, so it is a total of 12.

Q 12 every Sunday?

A Right.

Q Are there any legal services provided at the institution for inmates there incarcerated?

A Yes, we have the law library, that is one, and we have a Legal Aid Society program which provides for

legal liaison between the inmate and his Legal Aid attorney, and also, they provide legal assistance with legal problems, even if an inmate has another attorney which would require asking that attorney a question, or something like that.

In other words, they won't interfere -- let us say the Legal Aid Society is not representing that inmate, the LEgal Aid Society won't interfere with his case if he is represented by a private attorney, but he will, let us say -- well, say the inmate has a question of his private attorney and he feels it would be better if the Legal Aid representative calls him, then he would do that for him also.

Q How many inmates are there which the Legal Aid people service?

a Mostly the entire population at the Queens House of Detention is represented by the Legal Aid Society.

Q As to the Legal Aid Program, who can go up to it, which of the inmates can go up to seek advice from the people who are specifically there under the Legal Aid program?

A Any of the inmates in the institution.

We have a regular interview form that is provided by that program and we distribute it to each inmate coming in to the receiving room, plus there is available copies on the housing floors, and an inmate fills out the

bottom of it and tears it off, that is the bottom of the sheet, and we have a special interview box set aside for it, and when the Legal Aid personnel gets there, he goes through the houses visiting them.

Q Do you have a copy of that handout in your possession?

A Yes, I believe I do.

Q Are any handouts given by the Legal Aid Society to incoming inmates?

A This one -- I am sorry, wait, that is the Correctional Association (indicating.) This is the one from Legal Aid Society (indicating.)

MR. FRIEDMAN: May I have this marked for identification as I think exhibit B?

THE CLERK: Yes.

One page document marked as defendant's exhibit B for identification.

(So marked.)

THE COURT: All right.

MR. FRIEDMAN: Your Honor, I offer this into evidence.

THE COURT: Any objection?

MR. HERMAN: No, your Honor.

THE CLERK: Defendant's exhibit B marked in

evidence.

(So marked.)

BY MR. FRIEDMAN:

Q I think you had in your possession a document which had something to do with the Correction Aid Program?

A The Correctional Association of New York.

That is a civil legal program to aid inmates with civil problems, not relating to their criminal case.

Q This is another legal aid program that you have in your institution?

A It is not Legal Aid, it is not the Legal Aid Society, it is a legal assistance to the inmates.

Q I see.

Who provides this?

A The Correctional Association of New York.

Q And when do they come in to your institution?

A The Correctional Association, Mondays and Wednesdays.

Q And how many inmates are eligible to receive this service?

A The entire population, their usual average caseload is about 15 to 20 per month.

MR. FRIEDMAN: May I have this marked for identification as exhibit C?

THE COURT: Let me see the other one.

(Document handed to the Court.)

THE CLERK: One page document marked defendant's exhibit C for identification.

(So marked.)

MR. FRIEDMAN: Thank you.

(Document handed to Mr. Herman.)

MR. HERMAN: Okay.

BY MR. FRIEDMAN:

Q Will you identify this document and tell us how an inmate might come into possession of such a document?

A This is provided for us by the Correctional Association of New York, they provide us several thousand of them, we keep them in the receiving room of the institution, and we also provide copies on each of the housing floors.

When an inmate comes in, a newly admitted inmate, we give him this and we give him a copy of the other one from the Legal Aid Society to inform him of the programs which are available to him, and also to provide him with this interview form that he can make out to get contact with the services of the people that are involved.

Q Then is it the basic practice of your institution in the ordinary course of business to hand one

of these to every inmate who comes into the institution?

A Yes.

Q Thank you.

MR. FRIEDMAN: Your Honor, I move that that be accepted into evidence as defendant's exhibit C.

THE COURT: Have you seen it, Mr. Herman?

MR. HERMAN: I have no objection, your Honor.

THE COURT: It may be marked.

THE CLERK: Defendant's exhibit C marked in evidence.

BY MR. FRIEDMAN:

Q Are there any narcotic addiction programs serviced within your institution?

A Yes.

We have many programs, we have many community based programs, drug free and methadon-type drug programs, that send workers to the institution to interview inmates for possible enrollment in those programs and to also aid the inmate in his court case, to sort of divert him from the court process into the drug program, and also to get him into the drug program possibly in lieu of bail, as a condition of the, you know, of his criminal court case.

We have numerous ones. I can give you a basic idea which ones have come in.

We have the Phoenix House, Elmcor, we have the Court Referral Project which is a drug program and which intervenes for the inmate in court.

We have Horizon House, Crossroads and Odyssey House.

Q And how many people were serviced by this program last month, if you can tell us, by these programs?

A Elmcor saw 41 inmates.

Phoenix House saw 5.

Qualicap saw 9 -- this is December.

MR. HERMAN: What was that last one?

THE WITNESS: Qualicap.

A The Court Referral Project saw two.

Horizon House saw 2.

Crossroads and Odyssey House saw one each.

Q And if you could please give us the statistics for the month before, as to how many inmates were serviced by those programs?

A In the month of November, the Phoenix House saw 9.

Elmcor saw 19.

Qualicap saw 5.

Samaritan House, another one of them, was in in November, they saw 8.

The Court Referral Project saw 4 and Horizon House saw 6.

Q And I take it from the fact that you say these are community-based programs, the Department allows counsellors who are not employed by the Department to come into the institution?

A Yes.

Q Does the Department -- Please describe the efforts, if any, of the department to seek out and encourage these people to come to these institutions?

A The Department of Correction itself, as well as the institution encourages outside participation, particularly from drug programs, and particularly from community based, organized community based programs, to come into the institution and visit with the inmates and to do whatever work they have to do.

A lot of the programs are funded by the Addiction Services Agency, as far as the drug programs are concerned, and they have an agreement with the Department of Correction to allow their people access, in all the institutions throughout the department.

Now the public relations unit of the Department of Corrections encourages outsiders to participate in programs, in fact, there are a lot of ex-offenders that

are employed in those programs who come to the institutions and visit as counsellors and as recruitment agents, so to speak.

Q Approximately how many of the people are granted access to your institution?

A I would say about maybe a thousand.

(continued on the next page.)

DIRECT EXAMINATION

BY MR. FRIEDMAN: (Cont.)

Q And when somebody comes to your institution, how do you know if he's one of the legitimate people who should be allowed into your institution?

A We have a pass system -- we have it committed to a computer system and we get a printout every week of all the names of all the people who are involved in the Queens House Detention, as well as citywide programs, who we would have to allow into the Queens House Detention.

I have it with me. I can show you, give you an idea. The exact number, I'd say it's close to a thousand. This is last week's printout. This lists all the names for the Queens House of Detention.

THE CLERK: Set of computer printouts marked Defendant's D for identification.

(so marked.)

Q I show you Computer printout marked Defendant's D and I ask you to describe what it is for the Court.

A This is a computer printout which is provided by the Central Office of the Department of Correction to all institutions informing them of the people that would be eligible under the pass system to visit their institution, as well as the people who are enrolled in ongoing everyday

activities in that institution.

We use this to check to see if the persons are authorized under the program to, you know, visit the institution.

Q So then, many of the people on there come in just for the purpose of providing programs and services to the inmates?

A Right.

Q And is it indicated on there specifically which people are allowed in for the purpose of providing services to the inmates?

A Yes.

MR. FRIEDMAN: Your Honor, I offer this into evidence.

THE COURT: Any objection, Mr. Herman?

MR. HERMAN: No.

THE COURT: Let it be marked.

THE CLERK: Defendant's Exhibit D marked in evidence.

(So marked.)

BY MR. FRIEDMAN:

Q Is there a welfare liason program in your institution?

A Yes. We have -- through the Correction

Counseling Service we have a direct liason with the New York City Department of Social Services, Welfare Division, which provides a service to the inmates who are about to be discharged and who have -- are sure that they are going to get turned loose in court to aid them with financial assistance when they get back into the streets so that they don't have to be penniless.

We have the Correction Counselors assigned specifically to that function and they interview inmates based on the request of the inmate and they make contact with that particular agency, the Social Services Office in the neighborhood where they live.

Q Approximately how many inmates are serviced per month by this welfare liason program?

A Approximately 22 per month.

Q And how often does this program operate in your institution?

A Every week day morning we have a counselor assigned to that function.

Q When you saw every weekday morning, does that include weekends?

A I'm sorry, Monday to Friday, sorry.

Q Every business day morning then?

A Yes.

Q Are there any religious +- where does that program meet, the Welfare Liason Program?

A On the 7th floor of the Queens House of Detention.

Q Are there any religious programs in your institution?

A Yes. We have a whole variety of religious programs. We provide religious services for practically all the faiths of representation of the inmates within the institution. We have Catholic --

Q Let me ask you this: When you say, "services," you mean regular religious services?

A Regular religious services as well as we have a volunteer clergy program.

THE COURT: Let's get to religious services first.

Q How often are these religious services held?

A On the average of once a week.

Q What are they?

A Let me give you it here. We have Catholic services every Sunday, Christian Science Services every Sunday. We have the Seventh Day Adventist Services on Sunday, in addition they give bible classes on Wednesday --

THE COURT: Seventh Day --

THE WITNESS: Seventh Day Adventist on Saturdays and they give bible classes on Wednesday. We have the Hebrew services on Friday. We have the Spanish-speaking Protestant services on Thursday and we also have the Group Suni Muslim Services on Fridays. We also have the Christian Science -- did I mention that?

THE COURT: Yes.

BY MR. FRIEDMAN:

Q Yes, I think you did.

A And we also have the Salvation Army comes in from time to time and they take the place of the Protestant Services on Sunday. They usually have a singing group with them, a choral group.

Q Youhad mentioned the Seventh Day Adventist. Do they have any type of a choir program?

A Yes, they have a choir program. They have been a very active group in our institution. On Saturdays they come in with something like eighty people and they also do group counseling at the completion of the religious services.

They have held baptismals at the institution at their request and they have been very helpful to the inmates.

Q When, if ever, is this choir allowed to rehearse?

A Wednesday. We also have the inmate choir that participates with them in the service. We allow them to practice every Wednesday in the auditorium.

THE COURT: You didn't say what Protestant Services you have. You mentioned Seventh Day Adventists and Spanish-speaking, you spoke of.

THE WITNESS: Right. We also have a Protestant Service on Sunday, your Honor. Sorry. It is a general Protestant service to encompass all the different sects of the Protestant faith.

BY MR. FRIEDMAN:

Q You had mentioned the voluntary clergy program. Will you explain that?

A There are a group of clergymen who come in not to conduct services but they will give religious guidance and counseling to inmates.

We have the United Methodist Church, the Baptist Church and members of the Catholic Church as well as other Protestant groups, and these volunteer clergymen represent parishes in the Queens Community and they visit the institution at various times. They go on the housing floors and they speak to the inmates.

They will also help them with some social service problems, for instance visting families or getting a message to the family, trying to arrange for, you know, reconcilliation of families once the inmates get out. They have been active in many areas.

Q You say they go to different housing floors. How do they know which floor to go to?

A They are assigned. We -- a member of their group is assigned as the liason officer, and we sit down with him and we make arrangements for them to -- which floor the particular inmate may be involved in.

For instance, we may have a Spanish-speaking clergyman and he knows that on the 6th floor there are a large group of Spanish-speaking inmates, and he would ask for that floor, and we would assign them to each floor and they know which floor to go to. That way they also build a rapport with the officer, and the officer and the correction counselor on the floor will then bring to his attention any problems that they have run across.

Q How many housing floors are serviced by these voluntary clergymen?

A The entire institution.

Q If a Catholic priest would come in in this voluntary clergy program, would then the Catholics be

serviced by that priest?

A No. This program is non-sectarian. Even though he represents the Catholic Church he would aid all inmates on that housing floor or tier regardless of faith.

They are not there strictly in a religious sense, they are there as a social service worker, too.

Q Yes, I understand. Previously you mentioned that the corrections -- correction counselors help the inmates make telephone calls.

Would you explain the policy of the department in allowing the inmates to make telephone calls and what telephones are available for the inmates.

A We have telephones installed in each of the four quadrants on the housing floors, and in the morning a correction counselor will go down and make up a list of all those inmates that are desiring to make phone calls.

Or the inmates will line up in that telephone and he will write down the name, the number, who they wish to call and he'll dial that number for them. The inmate is allowed to make any call within the -- we have specific area codes which includes Westchester, Jersey, Connecticut -- anything within the New York-Metropolitan area.

Q Well --

THE COURT: I will take a few minutes now.

(recess taken.)

BS/td 2/2

(Witness resumes the stand) 36

BY MR. FRIEDMAN

Q I think you were talking about the ability of inmates to make calls from phones available on their housing floor area, including Jersey and Westchester County.

THE COURT: Do the correction counsellors provide the coins to make calls to Westchester and Jersey?

THE WITNESS: No coins are needed, your Honor, it is a direct dial tone. He dials the call for the inmate, then hands the call to the inmate, and the inmate speaks on the phone.

Q If there is a charge for that call to Jersey, is that charged to the inmate?

A No. The calls are within the allowed area codes, and are paid for by the Department of Correction.

Q Even if it is a toll call?

A Right.

Q Would there ever come a time when an inmate might be allowed to make a long-distance call outside that area?

A Yes.

Q Where would that call take place?

A That call would take place either in the receiving room or the counselling room of the institution.

That's a special arrangement that had to be made.

The inmate would submit an interview slip, or speak to the correction counsellor to make arrangements for a long-distance call.

Usually, the long distance calls are paid for by the inmates themselves, except in a case of dire emergency, if the inmate is without funds, or if it is something especially related to his case, which would have to be a decision that would be made by the Deputy Warden of the institution to determine that; he would make the call at the City's expense.

Q Are there any job training programs in your institution, such as Manhood Foundation?

A Yes. We have the Manhood Foundation, which is an association of ex-offenders, and they provide job training and counselling programs for the inmates at the House of Detention.

It is on a referral basis. Counsellors would refer the inmates to them, and they come in from Monday to Friday night, before -- they would call first and find out if there are any people requesting them, or if not, our counsellors could call their office at Lenox Avenue, Manhattan, and make arrangements for a discharged inmate to go into their program.

Q I am not sure, is this available only to sentenced inmates, or is this available to all?

A It would be available to sentence inmates and detainees, let's say, who are -- let's say they have done time upstate, and they come down on a coram nobis case, and then they would be released in that manner, and we would set up the referrals for them.

Q Have any marriages ever been performed in your institution?

A Yes, we have had a number of marriages performed. Just recently, we have had three marriages performed, one in December, and two this month.

Q And they were court-ordered marriages?

A Yes.

Q Was the inmate allowed to bring anyone down, the group, anyone down?

A He usually selects a friend of his as best man off the housing floor. The bride, of course,comes into the institution with the clergyman. Even in some cases -- in one case, the clergyman was from an outside church, where they requested to marry them. As a rule, the County Clerk is the one that performs the marriage.

Q And does the Department provide any refreshments or anything after the ceremony?

A Yes, we provided coffee and cake for the people that got married.

Q You had mentioned previously that you have a law library in your institution.

Could you please describe that?

A We have a special section on the seventh floor of the institution which provides for some approximately two thousand volumes of law books, and it is a newly established program, to allow inmates to do legal research.

We also have an administrative assistant. His title is Coordinator of Institution Legal Services. He is there to assis them. He has a background -- I believe he is a lawstudent. He has a background in research and using of the books, and he will aid the inmates in what they are trying to find -- there are a lot of inmates who want to submit pro se motions, and there are a number of inmates, who are defending themselves, and we allow -- we will, of course, allow all inmates access to the law library.

There are some inmates, who, quite frankly, want to check up on their lawyers, to see if their lawyers are doing a good enough job for them. Some inmate may have told them something, who has had experience with it, and they want to check facts out.

To give you an example, it is a very popular program. For the month of December, 241 inmates used the law library, and as a result of that, 25 inmates were prepared enough to

make their own pro se motions.

Q Is an inmate allowed to take one of these books back to his cell?

A No. We don't allow that because of the valuable nature of the books, and because if the books are in circulation, they would be depriving another inmate.

However, if he wants an excerpt of that book, if there is any pertinent paragraph in there or pages he wants, we allow him to photocopy it. We provide a photocopy machine that is made especially for that.

Q Who pays for the cost of that?

A The City of New York pays for that.

Q And is there presently some program between the City of New York and West Publishing Company?

A Yes.

Q Could you describe that?

A We expect the West Publishing Company, within the next few weeks, to come in and give classes to the first group of inmates who we have selected to participate. They are going to train the inmates in the research use of the books and how to research a case, and then we are going to utilize these inmates under the wage incentive program, to teach the next class of inmates, and we hope to keep the program going, where there will be one class of inmates

teaching -- an outgoing class will be teaching the incoming class, and we are going to pay them under the wage incentive program for that.

Q Will these people that have been so taught, be of any aid to other inmates in the institution?

A Yes. They will be able to teach the other inmates how to use the books, the proper use of the library, you know, the things to look for then when they are in that library.

MR. FRIEDMAN: Can I have this marked for identification, please?

THE CLERK: Set of documents marked Defendant's E for identification.

(So marked.)

BY MR. FRIEDMAN:

Q I show you Defendant's Exhibit E marked for identification, and ask you to describe it to the Court.

A This is an inventory list of the books that we presently have in our law library, and the number of volumes of each of those books.

This was prepared by Mr. Miranda. He keeps an ongoing inventory of all those books.

Certain ones may be expiring, or they may be out of date, and he has to reorder. As a result, he takes this

inventory.

Q Who is Mr. Miranda?

A He is our Legal Service Coordinator for the institution.

MR. FRIEDMAN: Your Honor, I offer this into evidence, as Defendant's Exhibit E.

THE COURT: Any objection, Mr. Herman?

MR. HERMAN: No.

THE COURT: Let it be marked.

THE CLERK: Defendant's Exhibit E, marked in evidence.

(So marked.)

Q You also indicated that you have, besides the law library, a regular library?

A Yes.

Q Could you describe that for us, please?

A Again, on the seventh floor of the institution, we have a regular circulating library, which has approximately eight thousand volumes, books available, general reading subjects available to the inmates.

Inmates are brought up there in groups of ten or fifteen, Monday through Friday, and they can select whatever volumes they want and take them back to their cells and read them.

We also have an availability of magazines.

Q Let me ask you this, when you say you have eight thousand books in the library, does that mean they are all contained on the seventh floor?

A No, there are several hundred that are in circulation. Men keep them in their cells, they don't return them promptly, so there is always a certain amount of books that are on the housing floors.

Q What is the capacity for inmates at one time in the library?

A I would say about thirty or forty at one time.

Q When a group is taken up there, for approximately how long is that group allowed to remain in the library?

A I would say roughly a half hour, and then once they have made their selections, the next group would come up.

Q How many days a week is this type of a procedure done?

A Monday to Friday.

Q You had mentioned that the library has magazines. Could you please list some of the titles of the magazines contained in the library?

A Well, Ebony, Jet, Outdoor Life, Sports Illustrated, I think it is, Popular Mechanics, Reader's Digest. That's all --about all I can think of. There are several others, but I

can't think of the names offhand.

Q Are the inmates allowed to take the magazines back to their cells?

A Yes.

Q Wouldn't that deprive another inmate of the chance to read that magazine?

A On occasion it does, because magazines are subjectto a lot of wear and tear, and there is a lot of destruction of magazines, and books, too. I mean, it is a situation where it is -- it gets abused.

Q Do you get one copy of each of these magazines into the institution?

A We get several hundred copies and we give them out as far as they go. We may get two hundred copies of Sports and Field, and they will get gobbled up on, maybe the first two hundred inmates that come up there. But the others have other magazines. There are certain magazines more popular than others.

This is based on contributions, we get from, you know, contributors.

Q I understand. Now, does the library contain books written in Spanish?

A There are some. There aren't too many available. In fact, I have been make arrangements with Mr. Castro of our

public relations department to try and get more Spanish speaking books. It seems that there aren't that many printed, and there aren't that many people ready to give them as contributions.

We don't have a separate budgetary allowance for Spanish-speaking books or library books.

Q Who is this Mr. Castro?

A He is the Directorrof Public Affairs for the Department of Correction.

Q Do you know what efforts he is making?

A Yes. He is very active in the community, and he's gotten us some three hundred books. In fact, I have to make arrangements this week, to pick them up at his home.

He has collected some three hundred books for us.

Q Are they in Spanish, to your knowledge?

A Some are, and a lot of --- the most popular books are those Black culture, you know, Black oriented type of books and Spanish, written in Spanish.

Q Do you have any Black culture books presently in the library?

A Yes, we have a number of them.

Q Is there an institutional newspaper in your institution?

A Yes.

Q How many inmates participate in the preparation of that?

A There are seven inmates on the Link staff. The name of it is Link.

MR. FRIEDMAN: Can I have those marked as a group for identification?

THE CLERK: Three newspapers marked as Defendant's Exhibits A-1, A-2 and A-3 for identification.

(So marked.)

Q Warden, one of these institutional newspapers has already been marked into evidence, it is not one which you gave me. But I notice that it says here on the publisher and director, "Warden Rubin."

Are you the publisher of this newspaper?

A No, not really.

That is a courtesy that was given to us by the -- this thing is in its -- it just recently started. It is only in existence about, I'd say, ten months to a year, and it seems the inmates, in courtesy to the warden, they felt that they, you know, sort of give you top billing.

Actually, the inmates, they print most of the articles in there. We got contributions from --

Q Did you ask that your name be placed on here as

editor and publisher?

A No.

Q Is this practice going to continue?

A No. I have had the format for that changed recently.

Q When was that?

A I asked for it to be changed in December, right after that issue.

Q So you specifically requested then, that your name not be included as publisher of the newspaper?

A Right.

Q I show you three institutional newspapers which you handed to me, marked Defendant's Exhibits A-1, A-2 and A-3 for identification.

Can you please describe to the Court what those are?

A These three are copies of the institutional magazine -- newspaper known as the Link. One is the March, 1973 issue. One is the August, '73 issue, and one is the July '73 issue.

MR. FRIEDMAN: I ask that these be received into evidence.

THE COURT: Any objection, Mr. Herman?

MR. HERMAN: No.

THE COURT: They can be marked.

THE CLERK: So marked.

(So marked.)

Q I show you these newspapers. In those three copies, is there anything that would provide any service to the inmate , such as a legal service?

A Yes, the paper is designed to be a service to the inmate, to inform him about institutional programs.

This one particular copy in July of '73, through the cooperation of some attorneys, I understand the Correctional Counselling Services, were able to get the cooperation, they printed all the necessary different forms for inmates, to make application for bail, to give them an idea of what it is like, to give them an idea of what their attorney had to do to get their bail lowered; different motions that take place in the Criminal Courts.

I can read some of them off for you.

Petition for writ of habeas corpus.

Notice of motions for recognizant or minimum cash bail.

Notice on a motion to change counsel.

Petition of habeas corpus, pursuant to mental hygiene law of New York State.

A notice for motion to dismiss an indictment.

A notice of a motion for a discovery and a bill of

particulars.

And a notice of appeal.

Q Let me ask this, if you would. Please identify which Exhibit that is.

A That is in Exhibit A-1.

Q Thank you. Now, how often is that newspaper distributed, in your institution?

A On the average of once per month.

Q To whom is it distributed?

A To all the inmates in the institution. We also have a mailing list, I don't have it with me, but we send it to outside interested agencies, in the hopes of stirring up some interest, you know, in their problems.

Inmates are allowed to express some of their opinions in that newspaper. They have also requested that certain organizations get copies of this newspaper.

(Continued on next page.)

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1 Rubin - direct 50

DIRECT EXAMINATION

BY MR. FRIEDMAN (Cont'd):

Q And is there any censorship exercised in that newspaper?

A Yes.

Q Could you please describe that for the Court?

A I would censor any type of an article that is inflamatory or anything that I would believe is not conducive to the good of the inmates of the institution and anything that could subject me or the City of New York to a libel suit.

Q Is there a commisary in your institution for the use of the inmates?

A Yes, on the eighth floor of the institution.

Q Would you please describe that for the Court?

A We have a room set aside on the eighth floor of the institution. It's a store type of a situation wherein inmates are brought in groups of 10 or 15 to make purchases. Those who have money in their accounts and they can purchase certain items such as cigarettes, candy, hair-combs, hair oils, shaving creams, talcum powder, soaps, tooth brushes, tooth pastes, milk, cake.

Q How often are the inmates allowed to go to the commisary?

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A Twice per week.

Q Is there a detainee work program in your institution?

A Yes, we have detainees working on the housing floors, housekeeping duties, serving of foods. They work on the individual housing floors.

We usually have a group of approximately 16 men paid under the inmate center program and they assist us and help to keep the area clean which is not an individual responsibility.

They will serve the food trays, wash and clean all the dishes after the food is served, and also serve inmates their food.

Q You said there is an average of 16 inmates; is that the whole institution?

A No, that's on each floor, each housing floor.

Q 16 on each housing floor on the average are employed therein?

A Yes. Some do barbering, and we will get a certificate of health from the doctor of the institution and they cut other inmates hair.

Q Are they paid for this?

A Yes.

Q How much?

A 10¢ per hour.

Q You said they keep certain areas clean, which are not the inmates responsibility. Which areas are those?

A The walk areas, the bridge area, the detainee is responsible for keeping his own cell area clean.

There is a corridor in front of the cell, catwalks, toilets and sinks not assigned to individual inmates, and this is all required to be cleaned.

Q Do they clean up the dayrooms?

A Yes.

Q Are there movies shown at your institution?

A Yes.

Q For the detainees?

A Yes.

Q How often are they shown?

A On the average of once a week.

Q When are they shown, is it depending --

A Monday to Friday. We usually try to have three showings of the move so the entire institution can see it.

We have a capacity of approximately 250 in the auditorium and we seat them three times to get everybody in the house to see that movie.

Q If I were on Housing Four-X, would I be called to the move at any time sporadically --

A No. We have a regular schedule.

Q So that therefore, I would know in advance what my day for the movie would be?

A Yes, unless something would happen to change the schedule. We'd let the officer know and he would let the inmates know.

Q What would cause a change in schedule?

A Film didn't arrive, breakdown in the projector. We might have an outside show coming in and cancel the movie. Because they would prefer to see the show rather than some of the movies we have.

Q Is there a gymnasium in your institution?

A Yes. The same auditorium where the movies are in actually it is convertible to a gymnasium. It's an auditorium and gym, all in one.

Q What activities are available?

A Volleyball, basketball, tumbling mats, horizontal parallel bars, weight lifting.

A lot of men like to participate in their own calisthenics. We have checkers and chess there also.

Q You said you had weight lifting. Is that conducted in the gymnasium?

A No. There is a separate room and there is interest in a weight lifting program and through the

Seventh Day Adventists' church, they made a contribution of equipment. We ordered our own and we can accomodate 15 inmates at a type in weight lifting classes.

Q Is there an instructor?

A Some of the officers, and we have some inmates who have a lot of experience and they instruct the other inmates.

Q How often are inmates permitted to go to the gymnasium?

A Once per week.

Q Is there also a roof facility?

A Adjacent to the gym on the other side, we have an open-air roof gymnasium which provides volleyball court and chess and checkers and some calisthenics.

Q Is there shuffle board?

A Yes.

Q Is there basketball courts there?

A No.

Q Was there ever a basketball court there?

A Yes. It was removed.

Q For what reason?

A There is a concrete ledge that jutted out from underneath the basket and we had a lot of injuries and we had to discontinue it.

Q When is the roof in use?

A During mild weather from April to October.

Q When the roof is in use, is the gymnasium closed?

A Yes, they operate together. They can go either to the gym or the roof.

Q So then from April to October, when it's the inmate's chance to go to the gym, he can choose between the gym and the roof?

A Right.

Q Are any games -- are activities provided for the inmates in their dayroom areas?

A Yes, chess and checker games, television sets, radio, playing card.

Q Are there ever any plays or concerts which take place in your institution?

A Yes, we have Hospital Audiences, a privately funded group, that provides shows to hospitals and other institutions, and the Department of Correction was able to get them. They visit our institution several times a year. We have the "Theater For the Forgotten." They put on some shows.

The inmates from the House of Detention are preparing to put a show on and we are going to film it to

7 Rubin - direct

show it in other institutions.

Q Do you know how many shows or concerts were held in your institution last year?

A I'd say 10 or 12. I have a listing here some place.

In 1973 we had nine shows, outside shows come in during the year 1973, provided by the "Theater For the Forgotten," and the Hospital Audiences, Inc.

Q How many performances of each of these nine shows were put on in your institution?

A When these people come in, we ask them to put on three shows because of our seating limitation. They accomodate us and put three shows on and that way every inmate in the house get to see the show.

Q Approximately what percentage of your institution is at Court on a Monday through Friday?

A I'd say about 20 per cent, 25 per cent.

Q So then if a person came to your institution to inspect it on Saturday or Sunday, would he get a true picture of the movement and of the conditions, as far as inmate population which are in your institution?

A No.

Q Why?

A Because there is very little activity on weekends,

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Saturdays and Sundays, because Courts are not in session.

A lot of programs, their normal business days is Monday through Friday. We have to go by availability of these services.

Q Are any special programs undertaken by your institution on holidays, such as this past Christmas, to benefit the inmates?

A Yes. We scheduled one show, Hector Rivera and his band, and the Funk House Review, and that's a show, a musical group, and they also have some women that model clothing.

We had a Spanish orchestra, Hector Rivera and his band.

Q Do the officers themselves do anything?

A Yes. Our Catholic chaplain, Father Harvey, undertood a program to get gifts for the inmates. The Salvation Army came in and distributed gifts and the officers helped in that and volunteered their own time, and we were able to get such fits as soap, toothe paste, candy, items of that type, writing paper, pencils, pens, stamps, greeting cards, and we gave them to the inmates as a gift.

Q You mentioned earlier, if an inmate filled out and interview slip, that would be the procedure of getting into one of these programs.

Would you explain the interview slip procedure?

A That slip is a regular form provided by the Department of Correction.

MR. SCHWARTZ: May I have this marked for identification.

THE CLERK: Interview slip marked Defendants' Exhibit F for Identification.

(So marked.)

Q I show you Defendants' Exhibit F for Identification and ask you to describe it.

Q It's Form 143, called interview slip, provided by the New York City Correction, means of providing communication from the inmate to the administration, and addresses it to the service, or the warden or deputy warden. Space is provided for the inmate to be either granted an interview or whatever he might want. He may have a problem. Sometimes he is having a problem with another inmate and we provide a locked box on each housing floor and the inmate throws it in there and this is confidental.

A superior officer goes around and empties these boxes and delivers these slips to the deputy warden and his assistant, and they sort them out to whatever program. Those requiring special interviews will be put on the side and they will be interviewed later on.

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Q If an inmate had a problem with another inmate, he could complain about it. What if he had a problem with an officer?

A Same thing. That's why it's locked up to be kept confidential. We eliminate the people from this. There are confidential items submitted in these things.

Q Has that in fact ever happened?

A Yes.

Q Has action resulted?

A Yes.

MR. FRIEDMAN: I ask the interview slip be received in evidence.

MR. HERMAN: No objection.

THE COURT: Let it be marked.

THE CLERK: Defendants' Exhibit F marked in evidence.

(So marked.)

Q You have stated the dayrooms contain television sets for the inmates' use.

Do these television sets become broken down at times?

A Yes, quite often.

Q What procedure or facility do you have to take care of broken television sets, if any?

A We have a correction officer who is a television repairman. We have this in other institutions. We take him off the rotating assignment and assign him to fix T. V. sets. That's his job.

Q One other thing I had forgotten to bring out. You were talking about the drug programs. Do you have a methadone maintenance program in your institution?

A No.

Q What would happen if an inmate would enter your institution and require methadone maintenance?

A We provide methadone detoxification to the Brooklyn House of Detention and then sent back to the Queens House of Detention.

Q Would you please describe what are the lockout times at the Queens House of Detention?

A Morning lockout is 8:30 a.m. to 11:00 a.m. Afternoon lunch lockout is from 12:45 until 3:15 p.m., and the evening lockout period is 5:45 p.m. to 10:30 p.m.

Q While the inmates are locked in their cells from 11:00 o'clock until 12:45 p.m., what occurs within the institution?

A The inmates are being ged their lunch meal. There is a count that takes place shortly thereafter, and

then the officer staff and the correction aide staff goes to their lunch period.

There is also a sanitation period that takes place. After they eat, the floors have to be swept and mopped.

Q The officers then go to eat; do they all eat at the same time?

A No. One at a time. We have a relief system to relieve the officers one at a time.

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(Continued on next page.)

Q Both officers eat separately, one would eat and then he is relieved and vice versa and that takes place between 11 and 11:45?

A Yes.

Q How long does it take to feed the inmates?

A To distribute it and all, about 45 minutes.

Q How long does it take for the count?

A About 20 or 25 minutes to verify every inmate, his presence on that floor.

Q Does the counting go on at the same time while the food is being passed out?

A Yes.

Q How long does it take for an inmate to eat his meal?

A Twenty minutes to a half hour, on the average.

Q How long does the clean-up take?

A About 15 or 20 minutes.

Q By whom is this performed?

A By the inmates.

Q Between 3:15 and 5:45, lock-in period, when inmates are locked in their cells, could you please describe for the Court exactly what occurs in the institution during that time.

A The same procedure. A count is taken. A breaking

of the tour occurs and there is a reassignment of responsibility from day officer to evening officer.

Feeding is taking place and the same situation, officers are being fed and except now the officers don't even enjoy the luxury of extra staff available and we slow down our relief.

During the morning feeding we have recreation, sanitation maintenance and officers are available and we speed it up a bit.

Q You mean after these officers are used for these things they eat and they go up and relieve a housing officer?

A That's right. You only work a man eight hours a day and we just don't have that many available to do that at all times.

Q How long does it take to pass out the evening meal?

A About 45 minutes or maybe a little longer. Usually the evening meal has meat and the better meals, such as roast beef or chicken or hamburgers or ham, and the reason we serve that in the evening is because many of them are out in court during the day and they wouldn't miss that meal. They don't get back too late in the afternoon and they would miss that meal.

It takes a little longer because you need a little more

supervision.

You want to make sure that one inmate doesn't beat another inmate out of the food and the luncheon meal is somewhat lighter and takes a little less supervision.

Q Is there a clean-up conducted after the evening meal?

A Yes. The same thing, the food is spilled at times on the floor and it has to be swept and mopped up. Some men use the showers and water is tracked all around and you have to continuously keep after the sanitation. People are using the facilities and we constantly keep after it.

Q In your institution during lock-out time do the inmates have access to their cells?

A No.

Q Have you ever been in an institution in an administrative position during lock-out time when inmates did have access to their cells?

A Yes, at the Brooklyn House of Detention from 1971 until April of '73.

Q What was your position at the Brooklyn House of Detention?

A I was Assistant Deputy Warden when the cells were opened and I was Assistant Deputy Warden and the rotating tour commander from the time the cells were opened there in

1971.

Q You have been an administrative employee in an administrative position in institutions that do allow inmates access to the cells during lock-out and one that does not allow access during lock-out; is that right?

A Yes.

Q Which in your opinion is the better correctional practice?

A I believe the cells locked is better because it afford better observation on the part of the officer, and protects the belongings of the inmate when he is away from the cell.

Most of them are poor in background and they have a few meager belongings and they have it in the cell. I have seen fights go on over the stealing of another man's property.

There were a couple of sodomies that took place because open cells provided a ready temptation for it.

There was a homicide in the Brooklyn House of Detention that is being prosecuted by the District Attorney.

Q Did this occur in an open cell?

A Yes.

Q When?

A July 31 of '72.

Q When this procedure was first started at the

Brooklyn House of Detention, having the cells open, was it successful at that time?

A Yes, for a few months. The group of inmates who bargained for it with the Warden and due to other things the Warden was inclined to try it and it worked out all right. There were some petty thefts, but nothing big. We used our own prestige and better-liked officers to recover some of the articles and after a time it deteriorated.

The group present at that time felt this is something they wanted. Then there was a turn-over of a different type of inmate and they came in and we have a very homogeneous population, you know. You have ten guys who are fine and you have one or two who have an ulterior motive. You never know how it is going to go.

Q The inmate population at Queens House of Detention, where have the majority of them committed the alleged crimes for which they are being incarcerated therein?

A In the Borough of Queens. About 150 from Brooklyn, Brooklyn cases were transferred to our institution because of over-crowding in the Brooklyn House of Detention.

Q Approximately what percentage of the inmates incarcerated in your institution list their address as Queens?

A I would say approximately 80 per cent.

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Q How do you know that?

A By handling the records. Most of the addresses come up with a Queens address.

Q Is there any regular procedure to assure inmates access to the press presently used at the Queens House of Detention?

A Yes. There is the Departmental directive allowing the press media to interview them. They submit one of the interview slips giving us the name of the press or the member of the press will write a letter saying that he has received permission from the inmate and would like an appointment and a convenient appointment in the council room of the institution is made.

I have seen some cases in other institutions where they had cameras set up and they interviewed inmates on the radio and television. It is standard practice in the institutions.

Q There has been testimony in Attica Prison incoming and out-going mail was read. Is that procedure in the Queens House of Detention?

A No. That is sealed by the inmate himself and mailed as his. The incoming mail in inspected. We have a female clerk assigned to the mailroom and the mail is only inspected for the contraband.

Q Is it censored?

A No.

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Q There has been testimony that at Attica visitors were conducted through a screen and this was followed by a strip search of the inmate.

Now, I think at Queens Detention House visitors are conducted through a glass panel, that they then converse over the phone with an inmate, and then is this also followed by a strip search of the inmate?

A No.

Q There has been testimony that at Attica the clothing provided for the inmates was wholly ill-fitting and inadequate. Would you please describe the procedure for providing the inmates with clothing at the Queens House of Detention, or do the inmates provide themselves with clothing, with what they consider proper clothing?

A Attica is a state institution, the state provides the clothing.

At the Queens House of Detention the inmate keeps his own civilian; if necessary, his family is allowed to bring him changes of that clothing, and we provide clothing for indigent inmates.

Q If a man has a family in the area, how often can he receive clothing from them?

A During their regular visit periods, twice a week.

Q And at that time is there any provision for him

to get rid of his dirty clothing?

A Yes.

Q What is that?

A He would leave -- he brings it down with him through the visiting booth, the officer on the inside of the visiting booth -- on the inside, the inmate's side -- he would write his name on the bag and he would pass it to the officer. On the other side, the visitor's side, he would then hand that bag of clothing to the visitor. The same with the visitor bringing for the inmate, the woman or the person -- I am sorry, it is not always a woman -- would put the name of the inmate on that bag. We would then search this clothing, inspect it for contraband, and then it would be distributed to the inmate on the other side.

Q What if an inmate is indigent and has no one who can afford to bring him clothing or just has no relatives in the area that can bring him in clothing?

A We would provide him with some clothing, if he needed some; we have contributions from community sources. In fact I know that in some of the institutions and also in Queens we get contributions from manufacturers of, you know, clothing. We also have Father Harvey, our institutional chaplain, he has a clothing drive from time to time through the diocese, and before him the other Catholic chaplain did,

and we usually have available in the institution pants, jackets, we have shoes, underwear, because we also have to provide our sentenced men with clothing such as underwear and socks, so we always have readily available socks, underwear for indigent inmates and we provide them with them.

Q How would you know?

A He would either speak to the correction counselor, most men are ashamed to admit things like that as a matter of his own personal prestige, so he sends us a confidential interview slip, which he would bring down very discreetly, and he would get the clothing and no one would know where it came from. We would try to keep it as discreet as possible.

Q Do any men in your institution try to get clothing from dry cleaners at this time?

A Yes, yes, we have, fortunately we have a correctional officer who is assigned to laundry who has an uncle in the dry-cleaning business and who had been giving unclaimed stuff to the Salvation Army, and now we are going to get this dry-cleaning from this dry-cleaning chain, we are going to get their contribution instead.

Q Was that accomplished by the initiative of this officer himself?

A This officer volunteered that.

Q There has been testimony that inmates at Attica

were not protected from unwanted homosexual advances.

Can you please describe for the Court what measures, if any, your institution takes to protect its inmates from unwanted homosexual advances.

A Well, number one, all our officer personnel are instructed and trained to observe, and they must make constant routine patrols of the housing areas to see that things of that nature don't take place.

We encourage inmates to report anything of this type, they may have difficulty with another inmate; and that is what I was referring to in that interview thing. Some inmates are not as strong as others and you get another man much stronger than the inmate, and he will be "sounding" on him, to use the inmate expression, to make advances to him, and if he doesn't know how to handle it, then we encourage him to send a slip to us and we handle that in a confidential manner. We do it discreetly, we transfer the two of them. We always segregate the non-homosexual, and we have a separate section for them. We keep the cells locked during lock-out time, when they are out in mass activity, then the noise level is up, et cetera, and this could act as a covering thing for somebody who had a motive of trying to commit sodomy, particularly in the gang type of sodomy where several inmates will gang up on an inmate and force him to submit.

Q Are there any open stairways available to inmates where they cannot be observed, that is, if two inmates got into any stairway; are any such stairs available at your institution?

A No, we keep all gates to the staircase locked. We also have no area in the institution where a group of inmates is present and where no officer is present. We have our staffing patterns and our assignments made so that the officers are where the inmates are.

We wouldn't have an officer in an unpopulated area, we utilize him preferably in areas where the inmates are together for that purpose, to observe everything that takes place, not only sodomies but any security breaches or just every-day -- well, every day you get fights, the officers are breaking up fights, that is part of their job, keeping order in the housing areas and throughout the institution.

Q Thank you.

There has been testimony that one of the problems at Attica was concerned with the fact that most of the staff was white whereas most of the inmates were black and Spanish speaking, that there were no black correctional officers and only one Spanish speaking officer.

Can you give us a breakdown of your complement of those which consist of Deputy Wardens, Captains, nurses, doctors,

psychiatrists, and please indicate what percentage are white, what percentage are black and what percentage are Spanish speaking?

A Well, we have 127 correction officers employed, 36 percent are black, 67 percent are white, and 7 percent are Spanish.

Now, amongst the black --

THE COURT: There is something wrong in there, it adds up to 110.

THE WITNESS: 67 and --

MR. FRIEDMAN: Yes.

THE WITNESS: Did I get the wrong figure?

I am sorry.

These were just off the top of the head figures that we compiled.

(Continued on next page.)

Q Do you have the numbers or just the percentage?

A I didn't break it down by numbers.

THE COURT: Maybe it means 57% White.

MR. FRIEDMAN: We can provide that later.

THE WITNESS: I did say 57%, your Honor, I am sorry.

A Now, also, among some of the White and Black officers, are men who speak Spanish, so that under Spanish, we listed men of Spanish extraction, you know, and --

Q Do they all speak Spanish?

A Yes.

Q What about the Assistant Deputy Wardens?

A The Assistant Deputy Wardens, we have eight, one is Black, and the other seven are White.

Q Captains?

A Captains, seventeen. We have thirty five percent who are Black, and 65% are White.

Q What about nurses?

A Nurses, we have one White nurse out of eleven, and the other ten are Black.

Q Doctors?

A Doctors, all nineteen are -- seventeen persons are White, and two are Chinese.

Q Psychiatrists, four, three are White and one is

Spanish.

Q Thank you.

Is there any classification system presently in use in the Queens House of Detention?

A Yes.

Q Will you describe that for the Court, please?

A We have a classification system in which we try to fit an inmate into the best type of housing that we have available within the institution, in other words, there are several categories that we would break [illegible] down into, he may need medical or psychiatric s[illegible]ion, he may require segregation into a special area, because he is a homosexual, he may need segregation in the administrative segregation area, because he is a co-defendant, who is testifying against another man in court, for his protection.

We may have notorious cases, for instance, organized crime figures, whose lives may be in danger, and we have a separate section for them.

We have the general population which consists of the fourth and fifth floors, and the sixth floor, and these men have just the general Criminal Court or Supreme Court background, with no -- you know -- special custody indicated.

We also segregate men according to their -- excuse me, I lost my chain of thought.

Q Is there a place in which you make any provision for drug addicts?

A Yes, I am sorry, this would go under the medical segregation. There are some men who are newly admitted drug addicts, who necessarily don't need methadone, they may need detoxification and we still have to segregate them to observe them, because of the possible suicidal risk that is involved with a man that is kicking the habit.

Some men may have a pill habit, or a habit other than heroin, for which methadone, you know, is not required there, and we segregate him where he will be kept under special observation.

That is about it.

Q When is the classification started for each inmate as he comes into the institution?

A Upon his admission to the institution, the first minute he arrives, and the correction captain on duty in the receiving room, will go over his record, look through the man's New York State identification information system record, he will check the background, he will look at the charges.

Sometimes the charge gives us an indication, maybe he has a sexual abuse charge.

Let me give you an example, a man comes in for molesting a child, and we would put him in administrative segregation,

because there would be strong resentment among the other inmates as to a child molester.

There may be a sexual abuse charge indicating homosexuality, and also if he is charged with murder, or if he is an in Court returnee under Article 730 of the Mental Hygiene Law, we put him in mental observation to observe him because of his mental background.

Also, the interview Captain, the Captain would interview the man after his medical examination and look at the doctor's interview, and see if there is a previous mental history, and to detect any type of suicidal tendencies or any other thing that would indicate that the man needs special watching, other than that, you know, provided in the general population.

Q Then once he is in the general population, is his classification ended?

A No, classification is an ongoing thing, a man may be in the general population today, he suddenly gets depressed, and the psychiatrist tells us that this man needs watching or he will get into trouble with the rest of the other men on the housing floor, so we have to move him off the floor for his own protection, or vice versa, and he is a weak sort of an individual, that may need some special watching, it may be any sort of a thing, and sometimes an

inmate himself, may request to see the psychiatrist, and the psychiatrist may not immediately be available, and we may move him sometimes, depending on our judgment, into an observation area, and just to make sure that nothing happens in between those few hours, until we can get him in to the psychiatrist, because sometimes, if he asks for it, that is an indication of something brewing inside the person.

Q Is there a special section in your institution set aside for the housing of homosexuals?

A Yes.

Q Where is that?

A On the third floor, the lower A tier.

Q And assuming one inmate would accuse another of being a homosexual, would accuse another inmate that he is a homosexual, is there a chance that that second inmate, the one accused, would be placed in the homosexual section?

A Not automatically, no, we have to screen it further, we have to go and have the man interviewed by the psychiatrist, and we would be guided by the psychiatrist's determination.

There are a lot of factors involved, we just can't take one man's accusation against another saying that he is a homosexual, we have to go into it, we have to develop it much further than that. There would either have to be some

sort of overt act complained of, which we would have to investigate, in order to determine basically, we would have to have the man examined by the psychiatrist and be guided by his determination.

Q And then there is -- you said, if there is a potential suicide, then there is a suicide watch section in your institution?

A There is a suicide watch section, yes, there are all sorts of inmate observations with emphasis on the suicide watch.

Q Where would that be located?

A Also on the third floor.

Q Where is the section that would house newly admitted drug addicts?

A Also on the third floor.

Q Now, is your institution periodically inspected by Federal Inspectors?

A Yes.

Q For what purpose are those inspections conducted?

A Well, the Federal Bureau of Prisons, we have a contract agreement, the City of New York and the Federal Bureau of Prisons, to lodge special Federal cases, men who are being detained on Federal warrants, or they have cases pending in the Federal Courts, and for some special reason,

they don't want them in the Federal House of Detention, so they house them in New York City Houses of Detention, and the reason for the inspection, is to determine if our standards meet their approval for the housing of those prisoners in that institution.

(Continued on next page).

Q And when was the last such inspection conducted?

A It was in October of '73.

Q And did you receive a report as a result of that inspection?

A No.

Q Subsequent to October of 1973 -- well, is that the general practice, that you would not receive a report?

A No, they don't have an official report. The inspector would come and usually speak to the Warden, tell me anything he found in the institution and in his opinion that he felt needed correcting, and the next thing is they would inform downtown, the Commissioner of Correction, that they will no longer house an inmate at that particular institution, their inmates, federal prisoners, at that institution, if they found things were not to their liking; that is, that would be deleterious to the health and welfare of their inmates.

Q Do you have any such federal prisoners?

A Yes, we have one.

MR. FRIEDMAN: Thank you very much.

No further questions.

THE COURT: All right.

Cross-examination, who is going to proceed?

MR. HERMAN: I will, your Honor.

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